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ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1888.

WITH INDEX.

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TO

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OF

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LAWS AND REGULATIONS.

VOLUME XXVII.

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Government of India Central Printing Office.—No. 308 L. D.—18-1-89.—300.—A. E. deS.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 6th January, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., R.A., V.C., G.C.B., G.C.I.E.
The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble J. Westland.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.
The Hon'ble W. S. Whiteside.
The Hon'ble J. W. Quinton, C.S.I.
The Hon'ble R. Steel.
The Hon'ble F. M. Halliday.

DEBTORS BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Sir Charles Aitchison and the Hon'ble Sir Dinsha Manekji Petit be added to the Select Committee on the Bill to amend the law relating to Imprisonment for Debt.

The Motion was put and agreed to.

INDIAN PORTS ACT, 1875, AMENDMENT BILL.

The Hon'ble MR. WESTLAND moved that the Hon'ble Mr. Halliday be substituted for Sir W. W. Hunter as a Member of the Select Committee on the Bill to amend the Indian Ports Act, 1875.

The Motion was put and agreed to.

CIVIL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Mr. Evans be added to the Select Committee on the Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877.

The Motion was put and agreed to.

INVENTIONS AND DESIGNS BILL.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Sir Charles Elliott and the Hon'ble Rájá Peári Mohan Mukerji be added to the Select Committee on the Bill to consolidate and amend the law relating to the Protection of Inventions and Designs.

The Motion was put and agreed to.

INDIAN STAMP ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. WESTLAND moved that the Hon'ble Mr Steel and the Hon'ble Sir Dinsha Manekji Petit be added to the Select Committee on the Bill to amend the Indian Stamp Act, 1879.

The Motion was put and agreed to.

POLICE BILL.

The Hon'ble SIR CHARLES AITCHISON moved that the Hon'ble Sir Charles Elliott be added to the Select Committee on the Bill to amend the law relating to the Regulation of Police.

The Motion was put and agreed to.

The Council adjourned to Friday, the 20th January, 1888.

S. HARVEY JAMES,
Secretary to the Govt of India,
Legislative Department.

FORT WILLIAM,
The 6th January, 1888

Government of India Central Printing Office—No. 264 L D.—6-1-88—300.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 19th January, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., R.A., V.C., G.C.B., G.C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland.

The Hon'ble Rana Sir Shankar Bakhsh Singh Bahadur, K.C.I.E.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.

The Hon'ble W. S. Whiteside.

The Hon'ble J. W. Quinton, C.S.I.

The Hon'ble R. Steel.

The Hon'ble Sir Dinsha Manekji Petit, Kt.

The Hon'ble F. M. Halliday.

INDIAN STAMP ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. WESTLAND presented the Report of the Select Committee on the Bill to amend the Indian Stamp Act, 1879. He said:—

"After the publication of the Bill we received a considerable number of criticisms and suggestions from the representatives of Insurance Companies as well as from other authorities. Substantially, no objection has been taken to the purpose to effect which the Bill was drawn; but the number of objections taken to what the Bill did not in any way propose to accomplish made it evident that it was desirable to modify its language so as to make its scope and intention more definite. It may be well then to explain that absolutely no modification is made in the law relating to any other subject than fire-insurance. The Bill modifies the definition of 'policy of insurance' by adding a clause which is strictly limited to fire-insurance; and although the amended schedule contains

three parts, (*a*), (*b*) and (*c*), it is in (*b*) alone, which prescribes the duties on fire-insurance, that any modification of the existing law is made. The modification made in it is a reduction of duty, namely, that whereas under the law as it now stands a duty of six annas per Rs. 1,000 is taken on any policy of whatever duration, we now take less than six annas if the policy is for a period not longer than six months. If a short-term policy is renewed we levy duty upon the renewal until the total of six annas is made up, and when this total is made up, the taxation, as under the existing law, ceases.

"A slight difficulty as to the manner in which the duty on renewals was to be taken is met by wording the definition so that the duty leviable in respect of the renewal need not be denoted upon the original policy, but may be, and oftenest no doubt will be, denoted upon the receipt given by the insurer for the renewal premium.

"One or two of the Companies made suggestions for the reduction of the rate of duty generally. We no doubt levy in this country a higher rate of duty upon fire-insurance policies than is imposed by the law in force in England; but the present financial position is not such as to warrant our proposing any further relief beyond the reduction, to something like a proportionate rate, of the duty upon short-term policies; and the Bill has therefore been restricted to its original purpose."

The Council adjourned to Friday, the 27th January, 1888.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 23rd January, 1888.

NOTE.—The Meeting fixed for the 20th January, 1888, was, by order of His Excellency the President, held on the 19th idem.

Government of India Central Printing Office.—No. 317 L. D.—23-1-88.—308.—R. B.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 27th January, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.C.L.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble J. Westland.
The Hon'ble Rana Sir Shankar Bakhsh Singh Bahadur, K.C.I.E.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.
The Hon'ble W. S. Whiteside.
The Hon'ble J. W. Quinton, C.S.I.
The Hon'ble R. Steel.
The Hon'ble Sir Dinsha Manekji Petit, Kt.
The Hon'ble F. M. Halliday.

INDIAN STAMP ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. WESTLAND moved that the Report of the Select Committee on the Bill to amend the Indian Stamp Act, 1879, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

TARIFF ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. WESTLAND also moved for leave to introduce a Bill to provide for the levy of a customs-duty on petroleum. He said :—

"In asking the permission of the Council to introduce a Bill of which the intention is to increase our revenue, I shall naturally be expected to give some account of our financial position, and to satisfy the Council that an increase of revenue is necessary upon financial grounds. This expectation is all the more justified in consideration of the fact that, last week, we exercised the power given to us by the Legislature, to make an addition of 25 per cent. to the Salt duties, a measure which deserves some explanation in view of the discussions which took place in the Council two years ago on the occasion of the imposition of the Income Tax in its present form. It would be absolutely impossible for me, within any limits of time, to go over anything approaching to the whole ground covered by our Indian accounts; and I would only weary the Council by leading them into a maze of figures in which all connexion would be lost. I shall assume, therefore, that the Council are already acquainted with the position which we realised in the Financial Statement of last March, when we presented our estimates shewing a practical equilibrium of revenue and expenditure. I shall adopt that Financial Statement as my standard, and shall explain, by reference to it, in what respects we now find ourselves worse situated than we then were.

"I know there are people who will not allow me to accept that standard, alleging that it is in itself one of extravagant expenditure and should not be accepted as the foundation of a claim on the part of the Executive Government to an increase of its revenues. Nothing is more common among some of our public critics than to accuse us of wanton extravagance, but I always observe that these accusations waste themselves in generalities, and do not address themselves to specific items of expenditure which it is considered might with advantage be discontinued. There are some people who are so entirely unable to grasp the large figures in which our accounts are presented, that they assume that the fact of our expending 77 crores of rupees every year is in itself proof positive of entire absence of financial control. They forget the enormous area which this expenditure covers. Compare it with the expenditure of the United Kingdom; it is only 60 per cent. of the amount (77 crores against 128, which is the equivalent of 90 million sterling), and yet it covers an area ten times as large and a population seven times as large. Moreover, think how much the effect of this comparison would be enhanced if we were to include in the expenditure of the United Kingdom, as we do in those of India, the hospitals, the roads, and

all the other expenditure that is in England charged to Local Rates, and even the expenditure on the maintenance of Railways. I know that the financial circumstances of England and of India are in many respects utterly incapable of direct comparison; but still, I think, we have some claim that those of our critics whose charges of extravagance are based only on the fact that our expenditure is stated in tens of millions, should bear in mind that the accounts we present are the accounts not of one Government, but of one Central and of nine Provincial Governments; and that of these Provincial Governments, five nearly equal in area, and somewhat exceed in population, the five principal Governments in Europe.

"We published, in the Financial Statement of March 1886, the comparative figures of our accounts for the past ten years, and I have seen the argument drawn from these figures that the rapid rate at which we have allowed expenditure to increase argues an absence of proper control. I have seen it made a matter of accusation against us that our expenditure in the first of the series of years alluded to was Rx.* 57,400,000, and in the last of them was Rx. 71,100,000, an increase on the face of it of Rx. 13,700,000, or something like 24 per cent. But it is almost a dishonest mistake to take the figures this way in the gross. Dip a little below the surface, and you find that of this Rx. 13,700,000, Rx. 6,800,000 arises in the account of Railways, and merely means that the Government possesses at the end of the period many more miles of Railway than it did at the beginning, and that it has to pay a much higher rate of exchange on the remittances necessary to pay the guaranteed interest. The extension of Irrigation accounts, in the same way, for Rx. 500,000; the famine insurance grant, which was not expenditure, accounts for nearly Rx. 1,000,000; a bumper opium crop accounts for Rx. 750,000; the extension of Post Offices and Telegraphs accounts for Rx. 600,000, but it brings in as big an increase of revenue as of expenditure. There remains only Rx. 4,000,000 to represent any real increase of expenditure; and of this amount even considerable sections would have to be written off as having no bearing on the question of financial control or economy. Rx. 300,000 of it, for example, mean that we remitted the putwari cess in the North-Western Provinces by taking over, as Government expenditure, the establishments which were maintained out of it, and another Rx. 300,000, represent the portion of Salt Revenue which we annually hand over to Native States under the arrangements completed in 1878-79,—a fiscal reform of the utmost importance which led not only to great development of revenue, but also to great economics in expenditure.

* The symbol "Rx." indicates tens of rupees.

"The figures which represent any real increase of expenditure during the ten years under review are dwindling down very rapidly; we have less than 3½ millions still to account for—something like six per cent. during the ten years. And even of this we might at once strike off, as entirely beyond our control, an increase of Rx. 600,000 in the charges for exchange upon our sterling obligations, namely, Rx. 400,000 in the interest on Sterling Debt, and Rx. 200,000 upon Superannuation charges; and as almost beyond our control, another Rx. 600,000 of exchange charges upon the Home Military expenditure. We have almost brought down to Rx. 2,000,000 what may be called the net total of the voluntary increase of expenditure in ten years.

"Of course we might have refused even this amount of increase. We might have refused to open new courts of justice where the increase of the population or of business demanded it. We might have refused to increase police expenditure, which is still, in the opinion of many authorities, at a dangerously low figure, and run the risk of breeding insecurity to life and to property. We might have stopped the increase of schools and of hospitals and of roads. We might have shut our eyes to events in Central Asia, and refused the increases of political and of military expenditure, forced upon us by the approach of a great civilized power on our North-West Frontier. In short, we might have refused to discharge the duties and responsibilities of a civilized Government, either with respect to our own subjects, or to the nations which lie beyond our frontier; and those who think we should have observed this attitude are, to this limited extent, right in pointing to our increase of expenditure as evidence of want of financial control. With such people I do not care to argue, and the Legislative Council is not the place where such arguments are called for.

"But while thus contending that the gross figures of our accounts contain in themselves at least a presumption of the moderate scale of our expenditure, I am far from denying that there is expenditure which cannot be done without. I would only say with reference to the details of it that we who are engaged in the control of expenditure in India, are so impressed with the hugeness of the demand for expenditure which is, of itself, of a useful and beneficial character, that we are the last people to willingly consent to divert to purposes of extravagance, any money which can be made available to meet that more pressing demand. There is hardly any limit to the amount of money that can be usefully spent in India, and the business of the financial authorities, both Imperial and Provincial, consists far too often in refusing money for objects of which the desirability cannot be denied, simply because it cannot be found either out of revenue, or by economies in expenditure.

"This is a process of exhaustion which goes on by a sort of compulsion and without intermission, in the ordinary course of the financial business of every department, and is sometimes helped forward by special enquiries, such as those made by the Finance Committee of 1886. That Committee has presented to Government a plentiful crop of suggestions which will continue for a long time to exercise the various departments; but I think I may say, both for the President of the Committee who now sits on my left and for myself, that throughout our enquiries we were greatly struck with the carefulness of detail with which expenditure was supervised, and with the very large proportion of cases in which, when we raised questions on the facts before us, we found that the questions were no new ones to the authorities concerned, but had been amply examined and discussed, long before we were set to work to put the authorities once more upon their defence. But in times of financial necessity, the line must be drawn closer. The Finance Committee's work was to indicate in what way this might be done, and it has resulted not only in actual economies, the credit for a large instalment of which was taken in the estimates presented last year, but still more in establishing a more rigorous standard by which expenditure, actual and proposed, has to be judged. The expenditure which has passed the review of that Committee is not likely to be really liable to the charge of extravagance, and that which they did not accept as necessary and justifiable has been, or is being, elaborately examined in search of possible economies.

"I think I have said enough to convince the Council that in adopting, as the standard from which I am to start, the figures of the published estimate for 1887-88, I am not asking them to condone any past sins of extravagance; but am presenting the account of India as it stands after long years of close attention to the interests of economy.

"The period of ten years over whose history I have rapidly glanced, terminated with the year 1884-85; and two years ago Sir A. Colvin, in introducing the Income Tax Bill, described that year as the last of the fat kine; he said that the lean kine were come in, though he did not then know how terribly lean they were going to be. But those who have watched the course of Indian finance during the two years that have intervened since Sir A. Colvin in this place explained the then financial position, will be prepared for the announcement that, from causes which I shall presently explain, we are at the present moment even further from equilibrium than when the Government appealed to the Legislature for an extension of direct taxation. It seems to me that the best way of showing the nature and origin of the difficulties which have thus accumulated about our financial position will be to make a comparison between

the figures of our accounts of 1884-85, the last year in which our financial position may be described as satisfactory, and those of the Budget Estimates of 1887-88. These Estimates shewed an equilibrium it is true, but it was, as Sir Auckland Colvin was very careful to explain at the time, an unstable equilibrium, an equality of revenue to expenditure, obtained only by pressing into the service of our expenditure revenues which up till then had formed a sort of reserve.

"For the purposes of this comparison, I have prepared, as my text, the following abstract of the accounts of 1884-85, and of the estimates of 1887-88. Abstracts, of course, may be made up in a hundred ways; but they all come to the same thing in the end, and are merely questions of the arrangement in which we choose to take up the subject in hand. The abstract I now put forward will be very easily traced back into its component figures in the published accounts; its main peculiarity is, that besides shewing the expenditure heads *net* instead of gross, I have separated the exchange figures, so that I may shew first how the comparison would have stood had there been no alteration in the exchange, and I have then shewn in a separate figure the extra charge falling upon us on this account. It will be seen that the totals up to which the Statement works shew that, whereas in 1884-85 we had 51 millions on the Revenue side, of which 48 went in Expenditure and 3 in Exchange, we find ourselves in 1887-88 with 3 millions more of Revenue, namely, 54 in all, but as Exchange now costs us 5 millions instead of 3, the 3 millions better Revenue afford us only one million for real increase of Expenditure.

000 omitted.

	Accounts, 1883-84.	Accounts, 1884-85.	Budget Estimate, 1887-88.
EXCLUDING EXCHANGE—			
Revenue Heads—	Rx.	Rx.	Rx.
Land Revenue	22,362	21,832	22,937
Opium	9,556	8,816	8,893
Salt	6,145	6,507	6,604
Excise and Stamps	7,350	7,618	7,942
Assessed Taxes	526	512	1,406
Other Principal Heads	6,098	5,795	6,345
TOTAL PRINCIPAL HEADS	52,037	51,080	54,127
Railway Revenue Account—			
Railways net earnings	8,066	7,685	9,002
Deduct Interest, Annuities and other charges	—7,269	—7,563	—8,600
TOTAL REVENUE ACCOUNTS	52,834	51,202	54,529

	Accounts, 1883-84.	Accounts, 1884-85.	Budget Estimate, 1887-88.
Expenditure Heads: Net—	Rx.	Rx.	Rx.
Interest	3,116	3,252	2,753
Civil Expenditure (a)	19,609	20,021	21,616
Opium production	1,855	2,966	2,505
Post Office, Telegraph, and Mint	311	279	145
Irrigation	547	573	759
Civil and Military Works, Imperial	2,042	1,395	2,009
" " " Provincial and Local (b)	2,731	2,698	2,220
Army	16,019(c)	15,200	16,907
Famine Insurance	1,523	1,548	95
Railway Construction	—176	263	75
TOTAL EXCLUDING EXCHANGE	47,580	48,225	49,078
EXCHANGE ON HOME EXPENDITURE	3,375	3,364	5,434
TOTAL EXPENDITURE	50,955	51,589	54,512
Surplus or Deficit	+1,879	—387	+17

"I have inserted, for purposes of comparison, the figures for 1883-84, but those I mean to deal with are the figures of 1884-85. The financial position in this last year may be called a position of equilibrium as we then understood the words. There is a nominal deficit of Rx. 387,000, but it is really due to the fact that the date with which our financial year ends, cuts in two the most active season of Land Revenue collection, and according to the distribution of the collections during the few days before and after March 31st, we get into the financial year sometimes a good deal more, and sometimes a good deal less, than twelve months' revenue. In 1884-85, we got a good deal less, but this of course was a mere temporary feature, and accounts for the fact that what was really a position of financial equilibrium shewed in the accounts as a deficit of Rx. 387,000. In fact as we are taking a general view of the financial position, and not confining our observations to the casual circumstances of a single year, we may go further and say that the year 1884-85 would have shewn the surplus of Rx. 500,000 prescribed by the Secretary of State, had it not been that a bumper crop of opium required an expenditure, exceeding by much more than that amount the average expenditure of a series of previous

(a) Includes Marine.

(b) After deduction of the amount charged against accumulated balances of past years (*i. e.*, Provincial deficit). When a Provincial Government draws on its balances to increase its expenditure, it is for the most part under this head that the increase occurs.

(c) Includes 1,000 (one million) arrear charges.

years. So that the financial position of that time might legitimately be described as one in which our ordinary standard of Revenue was sufficient to enable us to meet all ordinary expenditure, to set apart for famine insurance Rx. 1,500,000, to invest in Railway Construction Rx. 263,000, and to shew after all a surplus of Rx. 500,000.

"We have now to compare with this the Budget Estimates of 1887-88; and first let us look at the Revenue side. Land Revenue has of recent years increased pretty steadily at an average of Rx. 120,000 a year and in three years this gives us Rx. 360,000; besides the addition of Rx. 420,000 of Upper Burmah Revenue. Salt, Excise and Stamps have added Rx. 400,000 to our resources. The new Income Tax has given us nearly Rx. 900,000; and other Revenues, say Rx. 200,000, besides Rx. 100,000 in Upper Burmah.

"Railway earnings have increased, but hardly at a more rapid pace than the charges against them, on account, mainly, of interest and annuities; of course when exchange is taken into account the heavy addition more than swallows up all benefit by increased earnings, but we are at present dealing with the figures independently of this consideration.

"The saving under interest is apparent only; we have been borrowing in sterling, but it is under the head of Rupee debt that we make transfers from the ordinary to the Railway account of debt; and the apparent saving under interest on ordinary debt re-appears as part of the increase of charge on account of exchange.

"The Civil expenditure (which in our accounts unfortunately includes marine charges) has increased by Rx. 1,600,000, of which at least Rx. 1,100,000 is due to Upper Burmah; the rest I do not stop to analyze; some of it is a mere set-off against increased revenue, and some of it is the unavoidable excess of estimates which disappears when the accounts are made up.

"For Imperial Public Works our ordinary standard is Rx. 1,000,000 for Military Works, and Rx. 350,000 for Civil Works, but the budget of 1887-88 is charged, in addition to this, with Rx. 480,000 for Upper Burmah and with Rx. 200,000 for the construction of Military Roads on the North-West Frontier.

"The figures of Army Expenditure shew a very heavy increase; nearly Rx. 1,000,000 arise from the measures taken for the increase of its strength, which were alluded to in the speech of His Excellency the President on the occasion of the introduction of the Income Tax Bill. The real cost of these measures is over Rx. 1,500,000, but various economies and reductions have been secured under other heads of Military Expenditure, so that the net increase

on the whole is stated under Rx. 1,000,000. But under this head we have also about Rx. 720,000 of special charges arising out of operations in Upper Burmah.

"We come now to the heaviest difference of all, the addition to the charge on account of exchange. Our remittances in 1884-85 were made at the rate of 19·31 pence (£1=R12·43), but in 1887-88 we estimated we could make them only at 17·5 pence (£1=R13·71); that is to say, each sterling pound of expenditure costs us 1·28 more in Rupees; and this difference, calculated on the whole amount of our sterling expenditure as it stood in 1884-85 (about £14,000,000), comes to Rx. 1,790,000. That is to say, that even if no increase of expenditure of any kind had occurred since 1884-85, we would still have to face an additional charge of this amount.

"Let us then summarize the changes that have taken place in our financial position between 1884-85, and the Budget Statement of 1887-88.

		Rx.
Army charges have increased by		980,000
We are spending on Frontier Roads		200,000
Upper Burmah is costing us—		
Civil and Marine charges	1,100,000	
Military and Civil Works	480,000	
Military Operations	720,000	
	2,300,000	
DEDUCT—Revenue	520,000	
		1,780,000
Exchange adds to our account		1,790,000
Total new demands		4,750,000

These demands we have met as follows:—

(1) We have obtained by the imposition of Income Tax	900,000
(2) And by other improvements of Revenue	960,000
(3) We have stopped for the time the appropriation to Famine insurance of Revenue amounting to	1,450,000
and to Railway Construction, of revenue amounting to, say	260,000
(4) We have diminished the amount of Revenue assigned to Provincial Governments, thereby causing a reduction of their Public Works expenditure by	500,000
(5) And finally we have absorbed the prescribed surplus of	500,000
	4,570,000

"There remains Rx. 180,000 arising out of a number of smaller differences

"This, then, was the financial position at the time of the Budget Estimates of 1887-88. The fall in the value of silver, the necessity of improving our military strength, and the expenditure connected with the occupation of a new province had absorbed not only the three years' improvement of revenue, but the whole of the margin which we possessed in 1884-85. Every rupee of the revenue shewn in the estimates of 1887-88 was pledged, as the financial statement put it, "for the necessary expenditure arising from our administrative needs;" and for the risks of war, and of famine, and of exchange, and of opium, nothing whatever was reserved. Nay, more,—we were pledged to heavy expenditure upon the defences of our harbours and of our North-West Frontier, and this expenditure, all unremunerative as it was, was entirely provided for by borrowed money.

"I can speak with the greater freedom in these matters, because in the advice I have given to the Government of India, I have throughout sought counsel of Sir Auckland Colvin. It is not that a new Finance Minister takes up the reins in the middle of the financial year, and changes the policy announced by his predecessor in his Budget Statements. The policy is the policy of the Government of India as a whole, whether Sir A. Colvin is its mouthpiece in March, or I become its mouthpiece in January. In the Financial Statement of March last it was clearly explained, that the question of increase of revenue by taxation had been before the Government, and that its consideration had been adjourned, not because the position was satisfactory, but because we had reached a critical point, and it was just too soon for us to determine exactly how matters would have to be settled. It is not without great reluctance and after serious consideration that the Government of India can proceed to measures of increase of taxation; and so long as the position was such that it was possible it might be tided over without taxation, we refrained from a proposal which we would have had to justify, more by our anticipations of what might happen to us, than by our knowledge of what had actually occurred. The small and continual changes, by which in more settled countries the revenue is from time to time adapted to the expenditure, are out of place in Indian finance; it is our duty to resist change as long as we can, but, when it is at last forced upon us, it is equally our duty to face it.

"The changes which have taken place in our financial position since the date of the Budget, have settled for us the question which was then held in suspense; the strain was then as great as we could bear without resort to new

taxation, but there was just a glimmer of hope that it might be relaxed. That hope has vanished; the strain has increased beyond the capacity of our revenue to endure it; and we are driven to seek remedial measures.

"The first item in which our burden is increased is again that of Exchange. The estimate of 1887-88 was taken at 17¼ pence. During the past year exchange had been as low as 16 pence, but it had rallied, and it stood at over 18 pence in the beginning of February 1887 There were signs of a fall just before the estimates were published, but with such an unstable item, it was possible only to take current facts for our standard; and we would not have been justified in taking, by anticipation, a lower rate, and founding on our anticipations a claim on the tax-payer's pocket. After the year opened, however, exchange settled down to a much lower rate than that of the estimates; and at that lower rate it has been so singularly stable, that the logic of facts compels us to assume, for all purposes of estimate of our financial position, the lower level, which seems for the present at least to be established, of just under 17 pence. Our present home expenditure is nearly £14,500,000; the military demands and the interest on the capital of the aided Railway Companies having added half a million to the standard of 1884-85; and upon this amount of expenditure the difference between 17·5 pence and 16·9 pence is Rx. 720,000.

"Then the railways have not been doing as well as we anticipated; our receipts under this head are greatly affected by circumstances so entirely beyond our control as the question of good or bad crops in America and in Russia, and the course of prices in England. We must necessarily accept such facts as they come, but the results of the year, up to date, are such as to shew that the Budget Estimate was based on too sanguine a view. We deal with huge figures under this head, for the gross earnings of the Railways which are paid into the Indian Treasury have recently been as follows:—

Actuals	1884-85	Rx.	15,958,615
"	1885-86	"	17,699,747
"	1886-87	"	18,109,537
Budget Estimate,	1887-88	"	18,428,770

"The active Railway season comes at the end of the financial year, and it is quite possible that we may witness a partial recovery before the year's account is closed; but as matters at present stand, our best estimate is that the net result of the Railway account, even after allowing for the reduction of working expenses, which becomes possible in a time of smaller earnings, may be Rx. 400,000 worse than in the Budget Estimates; and seeing the large amount

of unremunerative capital expenditure that is going on, we should not reckon on any immediate improvement bringing in more than will cover the additional interest charges.

"In still one other respect have I to report what looks like a permanent deterioration in the financial position; it is in the effect on our opium revenue of the recent convention regarding the collection of duty in China. In the case of Bengal opium, the addition, or the additional certainty, of the duty in China reacts directly in reducing the auction price; in the case of Bombay opium, we get our full duty, but we cannot expect, if the Chinese maintain the rate of 110 Taels, to maintain the present amount of the export. The loss in the current year will be something between Rx. 250,000 and Rx. 300,000 as compared with Budget Estimate, and it would be unwise to fix the standard of future revenue higher.

"I have mentioned that Rx. 720,000 of special military expenditure in Upper Burmah was proposed in the Budget Estimates for 1887-88. The Government have not found it possible to reduce this expenditure so soon as was anticipated, and the figures of 1887-88 will shew a considerable excess over the Budget Provision. But measures of reduction are now being carried out, and we hope next year to get off with no more than the expenditure estimated for 1887-88.

"The deterioration in our position which we have to face is, therefore, thus made up—

	Rx.
Exchange	720,000
Railways	400,000
Opium	300,000
TOTAL	1,420,000

"If I have succeeded in making plain the financial position with which we started in the estimates presented last March, it will be immediately evident that we are now under an obligation to seek, by improvement of revenue, at least this amount of amelioration.

"I know that it may be objected that part at least of the expenditure which was charged in our estimates is of a temporary and special character only; that it is of the nature of capital invested once for all. We have a new province, for the acquisition of which we have to pay large sums of money on account

of military and military police charges. We have to fit it out with new roads and new buildings, civil and military; in short with all the appliances of a civilized administration. It is a country which we hope will ultimately pay even in a purely financial sense, but just at present it imposes upon us, as was shewn in the last Financial Statement, a net expenditure which may be stated at Rx. 1,780,000. It may be said of this and of the Rx. 200,000 of frontier roads in the Punjab, that they are a sort of Capital expenditure which we should not charge upon the revenues of the year. But there is really only one logical distinction that we can draw with reference to expenditure of this class. If in respect of any of the expenditure we are now incurring, we calculate that it will produce in future a revenue sufficient to meet the burden of the interest, we may without fear meet it out of borrowed money, because we know that though we refuse to bear the burden now, we throw no burden upon our successors which we do not furnish them with the means of meeting. The financial position of future years will not be the worse for the course of action adopted by us. But in the case of expenditure, whether we call it expenditure on Capital account or on any other account, which will not in future be financially reproductive, we have absolutely no choice left us, but either to meet it out of the revenue of the current year, or by borrowing to throw the charge upon the unincreased revenues of future years; no amount of re-arrangement of accounts can alter the fact that it is a charge against the existing scale of revenue either of the present or of future years. It may be a fair question for discussion, to what extent we are equitably entitled to throw forward such burdens, and to the extent to which we are so entitled, we may fairly face a deficit and leave it to succeeding years to make it good by contributions which will continue after the expenditure has ceased. But there is assuredly no justification for our throwing forward *the whole* of the burden, and compelling future years to bear a charge to which we contribute nothing ourselves.

"But, in distributing the burden between ourselves and future years, we must take into account the whole of the circumstances. The Budget standard of Revenue and Expenditure was Rx. 77,450,000, and we have, as just explained, lost Rx. 700,000 of revenue, and added Rx. 720,000 of expenditure; so that we have now Rx. 76,750,000 of Revenue to meet Rx. 78,170,000 of expenditure. Even if we admit the division of this last into Rx. 1,980,000 of extraordinary expenditure and Rx. 76,190,000 of ordinary, the result will be that, after providing for our ordinary expenditure, we have a surplus of only Rx. 560,000 to set against the so-called extraordinary expenditure of

Rx. 1,980,000. But unfortunately we have, of this last class of expenditure, not only the Rx. 1,980,000 just mentioned, which are inside the revenue account of our Budget Statement, but we have also the following amounts which we have not yet considered, and which are shewn among the expenditure charged to loan; namely, about Rx. 750,000 for special defence works and Rx. 1,000,000 for improvement of Railway communication on our North-Western Frontier. We have thus a total of unproductive expenditure of Rx. 3,730,000, and there is no doubt that this rate of expenditure will last for two or three years yet. Can it be pretended, that we do our duty if we contribute to this large amount no more than Rx. 560,000 out of the current revenue, and throw forward the balance of Rx. 3,170,000 as a burden to be met in future years? And the real state of the case would stand even worse than this, for as we have for the present thrown off the burden of insurance against famine, the Rx. 560,000 is all the contribution we have to offer, both for the chances of famine and for the heavy unproductive expenditure to which I have alluded I do not think that, on the most selfish reckoning of the account between ourselves and future years, such a policy could be justified.

"It is only too likely that future years will have their own burdens to bear. We are a little too apt to talk of our own special burdens as if the financial sky would clear when they passed away, but Indian Financial history shews that they too often pass away only to be succeeded by special burdens of a new kind, and that we should not too easily reckon on future years retrieving a position now lost. There is only one respect in which we have before us a certainty of relief, namely, that the conversion of the 4 per cent. sterling stock into 3½ per cent stock, will, not next year but in the year after that, reduce our interest charges by £260,000 or Rx. 370,000. We may regard this as a partial insurance against further depreciation, but it is no warrant for our declining to undertake the measures that are necessary to render our present position sufficiently secure.

"I have now described the financial position, and the necessity which lies upon us of seeking to improve it by a considerable addition to our revenues. The Council are aware in what direction we have sought the greater part of the remedy, and that on Thursday, January 19th, we used the powers given us by the Legislature to raise the Salt Duty from Rs. 2 to Rs. 2-8 in continental India, and from 3 annas to Re. 1 in Burmah.

"After what was stated here two years ago, by Sir Auckland Colvin when introducing the Income Tax Bill, I need not say that it is with the greatest

reluctance that the Government finds itself obliged to have recourse to the Salt Duty. The Government, in the beginning of 1886, appealed to the Legislature on the ground that before resort was had to a tax which falls on the millions of the poorer classes, it was bound first to obtain a reasonable contribution from the more wealthy. But that having been done, we are now obliged to proceed one step further, and adopt the measure from which we then were able to escape.

"When the Salt Duty, in 1882, was reduced from Rs. 2-14 in Bengal and Rs. 2-8 in the rest of India to Rs. 2, Sir Evelyn Baring wrote thus (*vide* Financial Statement for 1882-83, paragraphs 192 and 201) :—

'192. In answering, therefore, the question of how far we may safely take off taxes in reliance on the Opium Revenue, a great deal depends on the nature of the tax we take off. If we abandon a source of Revenue which involves a permanent and absolute loss of money, and which moreover, from whatsoever reason, it would be difficult, in the event of the Opium Revenue failing, to restore to its former position, then the course would be open to great objection. If, on the other hand, we reduce a duty with a fair hope that the reduction will increase consumption, and thus, after a while, recoup us for any loss, and if, moreover, the duty can, without any great fiscal disturbance, be re-imposed in the event of the Opium Revenue falling off, then the reduction of taxation would be unobjectionable. The Salt Duty falls within the latter of these two categories.'

* * * * * * * *

'201. I have said that, by reducing the Salt Duty, the general financial position will be strengthened. We hope that we shall be able to maintain the duty at R2 a maund, and we have at present no reason to suppose that we shall be unable to do so. By a return to a higher rate we should, of course, to some extent at all events, sacrifice the main object we have in view, *viz.*, to afford some relief from taxation to the poorest classes. At the same time I should observe that if any unforeseen circumstance, such as a heavy fall in the value of silver, takes place, and if, at the same time, the reduction in the Salt Duty does not result in any considerable increase in the consumption of salt, it would be open to us to return temporarily to a higher rate. This is an expedient to which the Government would have recourse with great reluctance. I allude, however, to the possibility of its adoption, for it is clear that should an emergency arise of a nature to diminish our other sources of Revenue or to increase our Expenditure, we shall be in a better position to meet it if the Salt Duty is R2 a maund than if it were levied at a higher rate.'

"The circumstances under which Sir E. Baring said that the Government might find it necessary to increase the salt duties, have now been realized. The value of silver has heavily fallen; the rupee was 20*d.* when Sir Evelyn Baring wrote, it is 17*d.* now. The opium revenue has failed; for it was then Rx. 9,800,000, and we now put it at Rx. 8,600,000.

"The following statistics, which exclude the figures relating to Burmah, may be given as shewing the consumption of salt and the duty paid on it. The figures are for the sixteen years ending 1886-87; and it may be added that the first nine months of 1887-88 shew only a very small advance over the same period of 1886-87 :—

Year.	Consumption in thousands of Maunds		Salt Duty in thousands of Rx.
1871-72	22,280	average 22,677	5,723
1872-73	22,833		5,902
1873-74	22,918		5,876
1874-75	23,182		5,906
1875-76	24,720		5,874
1876-77	24,557		5,985
1877-78	24,676		6,189
1878-79	25,205		6,511
1879-80	27,071	average 26,963	6,910
1880-81	26,660		6,751
1881-82	27,158		6,976
1882-83	28,720		5,729
1883-84	29,169		5,815
1884-85	30,746	average 30,820	6,129
1885-86	30,081		6,003
1886-87	31,633		6,338

"It may be noted, with reference to these figures, that, reckoning upon the averages above shewn, we may divide the whole into two periods. During the earlier of these, which preceded the reduction of duty in 1882, the rate of increase of consumption averaged annually 2·2 per cent.; while since the reduction of duty the annual increase has averaged 2·7 per cent.

"The figures shew also that the extra duty of eight annas may be expected to bring in an extra revenue of Rx. 1,600,000, and considering the improvement in all means of communication and the generally improved condition of the people, we may reasonably hope that the burden of a duty of Rs. 2-8 will not now have any effect in restricting the rate at which the consumption is increasing.

"The case of Burmah is different from that of the rest of India. The duty there has been three annas only, and as the Government of India were bound by treaty to permit salt to enter Upper Burmah at a very low rate of duty, it was practically impossible, while that treaty was in force, to levy, in the shape of Salt-tax, from the people of Lower Burmah, the same contribution which was

paid by the inhabitants of the rest of India. Another reason used to be urged in the same direction, namely, that the capitation tax in Burmah—or rather the capitation system of assessing Land Revenue—took to some extent the place of the Salt Tax in Continental India. It is very difficult to draw comparisons between the burdens of taxation in the various parts of India, —especially when circumstances differ so much as those of Burmah and of Continental India,—but the present Chief Commissioner is strongly of opinion that the increased tax can easily be borne, and should certainly be raised. The present enhancement of the Burmah salt duty will add to the Revenues about Rx. 125,000.

"It is to be noted also, as regards Burmah, that we do not intend to renew the exemption from income tax which hitherto, for administrative reasons, has applied to Lower Burmah. The tax legally applies to the whole of Lower Burmah, but assessment and collection will be made only in towns and centres of trade. We therefore intend, in Lower Burmah at least, as in India generally, to make the richer classes contribute according to their means, while we impose the general salt tax on all classes alike. In Upper Burmah, too, we hope to increase the revenue by taking measures for the restriction and taxation of the traffic in liquors and opium. We are carefully collecting information towards this end, as we are determined that any excise system which we introduce in Upper Burmah shall be really the imposition of a tax upon existing trade and shall not involve the expansion or creation of a trade where little or none exists.

"Another measure which the Government proposes to adopt for the increase of its revenues is the imposition of an import duty upon petroleum. Import duties in India are matters that require delicate handling, but there is not the slightest occasion for us to take up the questions affecting such duties generally. I have only to say that we want money, and that whatever may be the case regarding other imports, petroleum is an article in respect of which most of the theoretical objections to an import duty disappear. The importation is, necessarily, and quite apart from any levy of duty, subject to rules and restrictions, which can very easily be made to lend themselves to the convenient and certain collection of duty. The oil is for the most part of a few well-recognized brands, so that there is no difficulty in fixing its value for purpose of duty. The production is a monopoly of one or two countries (mainly, America and Russia) with which the production of India or of other countries can hardly enter into competition, and the circumstances are such that the advantage which the producing countries at present have, will remain practically unaffected by the small duty we propose to levy.

"So far as the consumer is concerned, he will certainly, even after the tax is levied, be better off than he was only a year or two ago; we are taking from him only a small part of the benefit he has received through development of the trade during the past few years.

"The statistics of the trade are as follow:—

Imports of Mineral Oil.

Year.	Quantity, Gallons.	Value, R Lakhs.	Value per Gallon.
			R
1873-74	Not stated	3·51	...
1874-75	Not stated	7·98	...
1875-76	621,530	4·46	·719
1876-77	439,123	4·91	1·12
1877-78	2,405,405	22·67	·942
1878-79	3,775,674	27·17	·719
1879-80	7,888,247	43·19	·611
1880-81	10,060,026	48·70	·485
1881-82	9,883,049	50·40	·511
1882-83	21,059,668	92·93	·441
1883-84	13,883,838	56·17	·407
1884-85	27,306,999	115·82	·425
1885-86	21,311,942	85·18	·400
1886-87	31,949,633	125·99	·395
1887-88 (8 months)	20,817,770	80·51	·387

"As the value of the imports of this year is slightly in advance of the quantity imported during the same months of last year, we may estimate the probable annual import at the value of 130 lakhs of Rupees, on which a five per cent. duty will give us an income of Rx. 65,000. The cost of collection will, we anticipate, be very little.

"For this project the sanction of the Legislature is required, and it is for permission to introduce an amendment of the Tariff Act for this purpose, that I now apply to the Council.

"The Government have considered the question of imposing a countervailing excise duty on oil produced in India, but have decided that this should not be proposed. The only Indian production on any considerable scale is that above Thayetmyo in Burmah. The production there is about 2,400,000 gallons, but as 80 per cent. is lost in refining, there is less than half a million gallons for consumption. A Company which exploited the wells near Akyab, was

driven from the market by the competition of American oil. There is a little oil in Assam, but it is not worked, and there is oil round about Rawalpindi, but it is not yet exploited, except to a very limited extent for Government purposes. The Government is labouring with some slight success, to obtain oil at Khattan, in Biluchistan. All these, however, are at the best mere nascent industries, which are utterly out of any chance of competition with imported oils, and the machinery of an excise duty is not required and should not, in the opinion of the Government, be applied.

"The two sources of revenue to which I have mainly made reference, will give us an enhanced income of Rx. 1,790,000; and we may add Rx. 100,000 as a moderate estimate of the produce of the other revenues to which I have referred. With these our financial position, supposing no further fall in exchange, and no further loss of opium revenue to take place, two contingencies upon which it would be rash to calculate, may be stated in the following way:—

Revenue.	Rx.
Ordinary and Recurrent revenues as they at present stand	76,750,000
New Salt Duties	1,725,000
Petroleum	65,000
Assessed Taxes and Excise in Burmah	100,000
Total Revenues	87,640,000

Expenditure.		Rx.
Ordinary and Recurrent Expenditure, being Rx. 560,000 short of Revenue		76,190,000
Special expenditure of which, except in the item of Military Expenditure in Burmah, no reduction can be expected for two or three years—		
(1) In Upper Burmah, in excess of Revenue	1,780,000	
(2) Frontier Roads on the North-West Frontier	200,000	
(3) Special Defences	750,000	
		2,730,000
Total charged on Revenue Account		78,920,000

"Besides Rx. 1,000,000 of North-West Frontier Railway Expenditure which is practically of the same category as this last, but is shewn as Railway Capital Expenditure outside the Revenue Account.

"The Secretary of State, although in modification of former orders he has directed that the special defence expenditure of Rx. 750,000 should be shown inside the Revenue Account, undertook, in his Budget explanation to Parliament, that the step would not involve the raising of taxation to meet it. Leaving it out of the account therefore, we have a surplus on the revenue account of Rx. 470,000, which is certainly not too much to estimate for, in the face of the risks of further fall in the price of opium and of silver, and of the fact that we are providing nothing for famine insurance and are throwing forward Rx. 1,750,000 of financially unremunerative expenditure, namely, the present annual outlay on special defences to our Harbours and Frontiers, and on Military Railways on our North-West Frontier."

Revenue . .	78,640,000
Expenditure . .	78,170,000
Surplus . .	470,000

The Hon'ble RÁJÁ PEÁRI MOHAN MUKERJI said:—"I had no notion that the Hon'ble the Finance Member, in moving for leave to introduce a Bill for imposing customs-duties on petroleum, would take occasion to place before the Council a statement of the financial position of the Government of India. As a non-official member of Your Excellency's Legislative Council, I wish it to be understood that, without a careful examination of the statement and of the arguments with which the Hon'ble the Finance Member has supported his figures, I am unable to say whether his reasons and the details he has submitted have my full concurrence. The additional duty on salt which Your Excellency has lately imposed by executive order has given the Government of India about £1,500,000, and it is at the same time a measure which has given very general satisfaction as one which will not touch to any appreciable extent even the poorest in the land. If more money is wanted, I think we should look in the direction of the import-duties. There might be reasons why the Government should not try to re-impose any import-duty on cotton twist and yarns and cotton piece-goods, which would give the Government of India a very large revenue, but I should think that petroleum is rather an insignificant article of commerce to impose a duty upon. The total value of the article imported to this country barely comes up to a million sterling, and we should remember also that it is one of those articles which has found its way to the homes of the poorest people of the land. Any duty imposed upon it would therefore touch even the poorest classes. There are other things, such as hardware and metals, which are imported to this country to a very large extent. If I am not mistaken, metals to the value of nearly £6,000,000 are imported annually into this country, and about £1,000,000 worth of hardware, and the duty on either of these articles would not touch poor people. I submit these facts to the consideration of the Hon'ble Council and of the Hon'ble the Finance Member."

The Hon'ble MR. WESTLAND said:—"The observations which the last speaker has made tended rather to open out the question which I deliberately avoided taking up, namely, that of the import-duties generally. It seems to me that, whatever might have been the objections to the removal of the import-duties at the time,—and I know that a number of people, especially those connected with the commerce of the country, thought that the removal of the import-duties was not called for,—the fact of the import-duties having gone renders it practically impossible for us to re-impose them. As regards the proposal that, leaving the cotton-duties alone, we should impose an import-duty on hardware, I have only to say that the question of the imposition of import-duties generally was one which, from many points of view, it was very difficult to take up; and that, as petroleum offers itself in a very easy manner to the production of a small duty, we have only at present made a proposal to impose an import-duty on it, without going further. I fancy that next Friday we shall have some more observations regarding the possible sources of revenue, and it is better for me to reserve till that day any observations I have to make on the general question of raising revenue. I may take this opportunity of making some observations with reference to the procedure adopted by the Government in raising the salt-duty the other day, because I have seen opinions expressed in some newspapers to the effect that the Government was not justified in resorting to what was considered an extraordinary means of raising the duty, namely, by issuing suddenly an executive order for raising an additional revenue of Rx. 1,600,000. I think we are justified, in the first place, by the consideration that, the legislature having laid down a definite mode of imposing the salt-duty, it was not open to the Government of India to proceed in any other way. Besides, to announce the imposition of the duty beforehand would only be to disturb and disarrange the whole trade. If we were to announce to those who were engaged in the salt trade that the duty of Rs. 2, which was at present levied, would at some future date be raised to Rs. 2-8, the only result would be that everybody would make a rush to at once clear out the whole of the salt they could possibly get, and the result would be that a great part of the duty which we intended to impose would be evaded, to the advantage of a few individuals and the general loss of the State. It is always advisable, in the case of the imposition of new tariff-duties, that the new measures should be taken suddenly and at once, so that every person might, as far as possible, be placed upon a precisely equal footing."

His Excellency THE PRESIDENT said:—"I do not think it necessary at

this stage of the proceedings to trouble the Council with any special observations in regard to the motion before it. But I cannot help expressing my satisfaction at hearing from our hon'ble colleague Rájá Peári Mohan Mukerji that the recent increase which we have made in the salt-duty has met with his approval. Representing so fully as he does the views of the intelligent and educated Native community of India, that expression of opinion on his part is very valuable. Of course it is with extreme reluctance that any one in my position can give his consent to any increase to the burdens of the people of India. Unfortunately it has become my lot on two several occasions to add to the taxation of the country. But in justification of this hard necessity it is sufficient for me to remark that since my arrival in India, owing to the depreciation in the price of silver, the annual accumulative loss to the Government has progressively increased year by year by a million pounds sterling. The loss in 1884-85, when I first took up the reins of government, stood at £3,400,000; in 1885-86 it amounted to £4,400,000; in 1886-87 to £5,400,000; and now in 1887-88 to £6,200,000. But, even in the presence of these growing embarrassments, I would certainly have been unwilling to have agreed to an increase of the salt-tax, had it not been, as the Hon'ble Mr. Westland has most clearly explained to the Council, that a somewhat unexpected loss of revenue had declared itself during the last year under two other heads—through a fall in the price of opium and in our railway receipts. As the Government would not have been in a position to suggest to the Council on other grounds than those of mere conjecture that any improvement would take place in future years under the head of exchange or even under either of the other two heads of income I have referred to, it became obviously our duty at once to strengthen our financial position and to provide ourselves with a working surplus. By the executive measure which we adopted a few days ago, and by the Bill which is now about to be introduced into the Council, I trust that this satisfactory result will be obtained. I am very glad that my hon'ble friend Mr. Westland has noticed the circumstances under which the Government was induced to issue a Gazette notification raising the salt-duty. In acting as we have done, we have merely acted in accordance with the intentions of an Act of the Legislature which placed us in possession of those powers which we put in motion. To have adopted any other course would have been undesirable. To have given the kind of notice which some persons seem to have desired would have only benefited a certain number of individuals at the expense of the community at large. I can quite understand that my hon'ble colleague Rájá Peári Mohan Mukerji should have felt himself—and

in that respect he has merely expressed what, I am sure, is the feeling of his colleagues—unable at this stage of the proceedings to enter into any of those larger questions of finance which my hon'ble friend Mr. Westland has brought to the notice of the Council. But I hope that he will appreciate the desire of the Government of India, in submitting to the Council so full a financial statement as that made by Mr. Westland, to profit by the experience and advice of those eminent gentlemen I see around me."

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also introduced the Bill. He said:—"The Bill, as hon'ble members will see, consists of two sections. The first makes a formal addition to the schedule which imposes import-duties under the Indian Tariff Act of 1882. In that schedule we have adopted the definition of 'petroleum' which is given in the Petroleum Act, and it will be seen that our proposal is to impose an *ad valorem* duty of 5 per cent. The second section has for its object to make perfectly clear the manner in which, and the extent to which, the duty shall be brought into operation. There is a proviso in the Sea-customs Act—namely, under section 37—which has the effect, with reference to articles on which an existing duty is raised, of exempting from increased duties those shipments in respect of which port-clearance has already been granted, that is to say, which are in course of import but which have not yet passed the custom-house. This proviso, we are advised, does not, as a matter of law, operate in the case of petroleum, because the duty on petroleum is not raised, but a new duty is imposed. But if this proviso under section 37 did apply, then we are of opinion that we ought specifically to provide that it should not do so. The operation of section 37 is practically to give to people who happen to be possessors of petroleum at sea an advantage which is an advantage gained at the cost of the State; whereas every other person who is a producer of petroleum will have to pay the duty, those who happen to be the possessors of the petroleum which is on the sea obtain the advantage of landing it free, while the action taken by us will probably have the effect of raising the price in their favour. It seems to us unnecessary, if we do wish to raise a tax on petroleum, to secure for these petroleum dealers a special advantage of three months, and therefore we propose to the Council that the proviso of section 37 shall not apply in the case of the imposition of this new duty upon petroleum. At the next meeting of the Council I shall move

that this Bill be taken into consideration with the view of having it passed, the Council approve, on the same day"

The Council adjourned to Friday, the 3rd February, 1888.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 1st February, 1888.

Government of India Central Printing Office—No. 971 L. D.—2-2-88.—300—R. B.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 3rd February, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.C.L.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble J. Westland.
The Hon'ble Rana Sir Shankar Bakhsh Singh Bahadur, K.C.I.E.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.
The Hon'ble W. S. Whiteside.
The Hon'ble G. H. P. Evans.
The Hon'ble J. W. Quinton, C.S.I.
The Hon'ble R. Steel.
The Hon'ble Sir Dinshaw Manockjee Petit, Kt.
The Hon'ble F. M. Halliday.

INDIAN TARIFF ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. WESTLAND moved that the Bill to provide for the levy of a customs-duty on petroleum be referred to a Select Committee consisting of the Hon'ble Messrs. Scoble, Whiteside, Steel and Halliday and the Mover, with instructions to report in one week. He said:—

"Last week I explained to the Council that I would on that day week propose that the Bill for the levy of a customs-duty on petroleum should be taken into consideration by the Council. But since then some circumstances have been brought to my knowledge which render it desirable that the Bill should be laid before a Select Committee before it is brought up before Your Excellency's Council. In the first place, there is a difficulty in the definition which we have

applied to petroleum. It has been explained to us that this definition covers not only illuminating oils, which we ordinarily understand by petroleum, but a number of oils which are used for such purposes as lubricating and 'batching' —a process in the preparation of jute for manufacture. It is not our intention to impose a tax on lubricating or batching oil; and if we can by amending our definition more accurately exempt these oils from the operation of the duty, it is desirable to do so. Then, besides this my hon'ble friend Mr. Steel has brought to my notice that, owing to circumstances connected with the trade in petroleum, there are reasons why it is desirable that, in lieu of an *ad valorem* duty, a duty of so much per gallon ought to be adopted. My hon'ble friend will, no doubt, explain this matter in full to the Council, but, as the proposition has been made, I think it is desirable that it should be considered with more deliberation than can be done at a meeting of this Council. I therefore propose that the Bill be referred in the first place to a Select Committee. We shall lose a week's revenue at least by this step, but, considering the support which Your Lordship's proposals have received from the mercantile community, and even from the firms which are engaged in the import of petroleum, I think it is desirable that we should meet their convenience by examining the details of the Bill in the light of the opinions which they have given us. I hope by this means to be able to produce the Bill before the Council after another week in a form in which it will be possible for the Council to pass it."

The Hon'ble SIR DINSHAW MANOCKJEE PETIT said :—"Not having read the statement of the financial position of the Government of India which the Hon'ble Mr. Westland had placed before the Council at the last meeting in moving for leave to introduce the Bill for the imposition of a duty on petroleum, I was not able to express an opinion on the question then; but now that I have gone through this statement I see that the major portion of the loss which the Government has sustained was owing to the low rate of exchange, over which no one had any control, and in order to recoup this loss to some extent I am of opinion that an *ad valorem* duty on petroleum appears to be the least objectionable. Kerosine is now largely used by even the poorest classes. Take, for instance, a family consisting of four persons of this class; the weekly consumption of this oil among them is very often less than one quart bottle; and, if a duty of five per cent. is imposed on a 10-gallon case holding about 48 quart bottles and worth from Rs. 3 to Rs. 5 according to quality, the amount of duty, say, on a case worth Rs. 5 would be four annas (or 48 pies), and that is about one pie a quart bottle. Consequently this duty will not prove at all oppressive even on the poorest classes. I see that an objection in some quarters has been

raised against the increase in the salt-tax of an additional duty of eight annas per maund; but, if the figures on this question are gone into, it will be found that this increase would be as little felt by the masses as would the duty on petroleum. As circumstances have arisen which necessitate the imposition of a duty on petroleum, and as this imposition would not, as I have above shown, at all affect the poor, I have nothing to say against its being levied.

"To recoup the continued heavy loss which has to be sustained every year in exchange, and which loss may hereafter still increase since exchange has fallen within a short time from 1*s.* 7*d* to 1*s.* 5*d*, and may go still lower to 1*s.* 3*d.*, I have to suggest that the question of imposing an import and export duty be considered, and for this purpose Government should, if it think it advisable, ask for the opinions of well experienced European and Native merchants in the three Presidencies, to see what their feelings and views on the subject are."

The Hon'ble MR. STEEL said:—"In the remarks which I propose to make I will, in the first place, address myself to the subject of the Bill now before the Council.

"I take no objection to the principle involved in the taxation of imported petroleum. On the contrary, I am convinced that, if additional revenue be required, there is no less objectionable source from which it can be drawn. I would have preferred that the amount of the duty had been fixed at an anna per gallon, which would have produced 20 lakhs, as it appears doubtful policy to impose a tax which will yield but 6½ lakhs of revenue. Even the higher rate of duty would not, in my opinion, materially affect the consumer, nor impede the development of trade. A tax on petroleum possesses the important advantage that it will involve little wastage for the cost of collection. The revenue derived from it promises to increase steadily from year to year, and will eventually be a valuable resource. But, while approving of the principle of the Bill, I desire to suggest that it may be greatly improved by substituting a tax on measurement for an *ad valorem* duty. A tax on value will give rise to disputes in appraising the oil. It will tend to discourage imports of the purer qualities of oil, and will encourage shipments of the cheaper and more dangerous kinds such as have in former years caused much trouble to Government. There is another objection to an *ad valorem* duty on this article. The value of a case of petroleum consists in about equal proportions of the cost of the oil itself and that of the tins and box in which it is packed. Now, if oil be imported in tanks and landed in bulk, such oil would practically be admitted at one-half the duty imposed on goods landed

in the customary packages. I believe there is a probability that Russian oil may soon be imported in tanks. I am in a position to inform the Council that importers would prefer a duty of 4 annas per case of 8 imperial gallons, which would yield 10 lakhs of revenue, to the 5 per cent. duty on value proposed in the Bill and estimated to produce 6½ lakhs. Any oil imported in bulk might pay the same duty of half an anna per imperial gallon. I trust these suggestions may be considered by the Select Committee. The hon'ble member has explained to us that the second clause of the Bill is designed to make it clear that the immediate operation of the law will not be limited or restrained by the reservations of the Sea-customs Act, which, if they had applied, would have permitted shipments cleared for an Indian port before the passing of the Bill to escape free of duty. On this point I entirely agree with my hon'ble friend. In the case of the recent enhancement of the salt-duty, the effect of section 37 of the Sea-customs Act has certainly been to benefit individuals at the cost of the public revenue. I should be glad to see the recurrence of such an anomaly prevented, and would be prepared to support a modification of the law repealing the clause in question. While on this point I must express the surprise and regret with which I have seen blame imputed to Government for enhancing the salt-duty by an executive order. Speaking on behalf of the mercantile community, I do not hesitate to say that any other course would have involved most serious loss to the revenue, for which Government would have been justly held responsible. The unfortunate proviso of the Sea-customs Act to which I have referred has put 10 lakhs into the pockets of individuals at the cost of the public. A fortnight's notice of your intention would have doubled the loss to the country.

"The writers in the press seem to be ignorant that Government possesses statutory power to increase the salt-duty to any point within three rupees per maund without legislation—a power that is confined to salt. Another complaint advanced in the press is the alleged loss which has fallen upon the owners of bonded salt in consequence of the imposition of the enhanced duty. I have made particular enquiries into this allegation, and it may be of interest to the Council if I explain the facts. The great bulk of the Liverpool salt in bond is owned by a syndicate of Native salt-dealers. These gentlemen are also the owners of a much larger quantity of salt on the way which will escape at the old duty. The immediate effect of the change has been to increase the value of floating salt by ten rupees a ton, and to depreciate that of bonded salt by three rupees a ton. On the balance the syndicate will be gainers of a very large sum. One European firm stands in the same fortunate position. The Bombay salt in stock yields a

large profit to the owners, as the duty was paid in Bombay at the lower rate at the time of shipment. The only other interest to be considered is that of the Muhammadan importers of Kurcuch salt from Aden and Jeddah. These merchants are the owners of about three lakhs of maunds of bonded salt, the value of which is temporarily depreciated, and I originally feared they might be losers by the change. Yesterday, however, the three principal merchants called upon me to explain their position and ask my advice. Their spokesman, who is a gentleman of great intelligence and polished manners, answered with perfect frankness the questions I addressed to him; and it appears that, while losers in respect of their bonded stock, they have been the owners of a considerable quantity of salt afloat, by which they will make more than they will lose. Their complaint when analyzed amounted merely to their objection that, while the change in the duty had given a great profit to their neighbours, it had given them little advantage. The deputation left me, as I believe, perfectly satisfied with the explanations I gave to them. It is thus evident the owners of bonded salt have suffered no hardship.

"I will now take advantage of this opportunity to make some general remarks suggested by the statement of the Hon'ble Finance Minister. The public will regard with particular satisfaction the fact that such a statement has been submitted to us. It will be recognized that, by the adoption of such an unusual course, Your Lordship's Government has shewn in the most practical form a desire to obtain for your measures the support of public opinion. It will be believed that on this mark of your confidence we may found the hope that Your Lordship's powerful advocacy will be given to that demand for a modification of the Council's Act which has recently been expressed with a unanimity almost unexampled in Indian experience.

"The hon'ble member began his speech by repudiating the assumption that our present annual rate of expenditure can only result from extravagant administration. On this abstract question his defence was complete. He shewed that the ordinary expenditure on administration has only increased by two millions or 3 per cent. in ten years—a period which has probably added 15 per cent. to the population. So far from agreeing with those who charge the Government with extravagance, I believe it is far more open to criticism on the ground of penurious reluctance to incur expenditure for the better administration of justice and the increasing requirements of advancing civilization. On the subject of military expenditure the public is not in a position to offer intelligent criticism. Your Lordship's military advisers must be the judges of the value and necessity

of military works. We have every reason to entrust them with our fullest confidence. We hold Government responsible for making us safe against any possible enemy—so safe that no one shall venture to attack us. Expenditure may be nothing more than a premium of insurance against panic and the reckless waste it occasions; but, even so, it is money well spent. And, if this responsibility is thrown upon Government, we must not grudge the means necessary for its efficient discharge. Nor do I complain that an unreasonable share of the cost of our defence will be thrown upon the coming year. I think the hon'ble member's views are entitled to generous support as those of a cautious and courageous financier.

"And now, my Lord, I must say something concerning the means adopted by Government for the restoration of financial equilibrium; and such value as this debate may possess will be derived from the expression of public opinion on this subject. As these measures have already been taken, and as we are now discussing what has been already done, and not what is yet to do, the debate is necessarily rather of an academic than a practical character. I trust, however, that the Council will not complain if I avail myself of this rare opportunity to offer some observations on the general subject of the comparative merits of direct and indirect taxation. The intelligent Englishman is apt to regard this comparison from the standpoint of his own experience. He knows that in his own country an income-tax yields without trouble a very large revenue. He knows that the proportionate cost of collection is small. He is a free-trader, and he knows that, if import-duties are to provide an important share of the British revenue, they must be exacted on a scale which will greatly curtail the volume of imports. He knows that, as trade is but another name for barter, a restriction of imports would involve a diminished demand for English industrial products, now taken by other countries as payment for the goods which England imports. As an enlightened disciple of free-trade principles, he knows how the interests of England are best served. But when such a man turns his attention to Indian finance he will have much to learn. He will find that a six-penny income-tax produces but a small amount of revenue: that of that amount 8 per cent. is wasted in the cost of collection. He will be told that an income-tax is obnoxious to every body; that it harasses not only those who pay, but also those who should not be asked to pay but who are worried with demands which it costs them much trouble and expense to set aside. For myself I may say that, while I have always considered an income-tax correct in theory, the experience of the last two years has greatly increased my objections to it on practical

grounds. When the enquirer turns to examine the incidence of indirect taxation in India he must be prepared for a new revelation. He will find that a salt-duty produces a large revenue without complaint from any quarter; that my hon'ble friend by a stroke of the pen can find a million and three-quarters of revenue which will not cost an additional rupee to collect; that the consumer, who will now be taxed a half-penny per month for his salt, will continue to use as much as he wants, and that, if the tax were a farthing per month, he would use no more; that there will be as little cause for complaint now the duty is increased as there was for gratitude when it was recklessly reduced. I have every confidence that the duties on salt and petroleum will not in the slightest degree limit the consumption; that our English and American friends will send us as much salt and petroleum as before, and will take from us as much of our produce in exchange. But, having said so much in favour of indirect taxation, I may be asked why I do not push my argument to its legitimate conclusion and advocate the re-imposition of the import-duties on piece-goods and the immediate abolition of the income-tax. My reply to this must be that I see no use in discussing a matter outside the range of practical politics. I think the duties were rashly taken off, but under present circumstances I know we will not be allowed to re-impose them.

"And now, my Lord, I will venture to say that it will be a mistake if this debate is allowed to take too gloomy a tone. We have much reason to look forward with hope to the future. Agriculture, the great stand-bye of the Empire, is flourishing as it never flourished before. The manufacturing interests are prospering and developing to the great benefit of the country. Trade is growing in magnitude. Communications are being rapidly improved. Our debt, although large, is amply covered by the value of State property. Burma will soon be peaceful and prosperous. Our frontier defences will before long be in a satisfactory condition. In your recent speech, my Lord, you attracted the sympathy of the country by the expression of your regret that it should have been your unpleasant duty to add to the burdens of the people. But the day may not be far distant when some Viceroy (I hope in the interests of the Empire it may be yourself) will have the pleasant task of remitting taxation on justifiable grounds. When that day comes, I trust you will be able to consult your Legislative Council, and we are ready with our programme. I trust the court-fees will be reduced and the rice-tax remitted. The obnoxious income-tax should be the next to go, and when any further power of remission remains we will not complain if our Finance Minister tampers with the salt-duty."

The Hon'ble MR. EVANS said :—"I am not an expert in financial matters, but having watched with interest the course of Indian finances from 1878, when I first had the honour of being a member of Your Excellency's Council, I am strongly impressed with the conviction that indirect taxation must be our mainstay in this country, and that further attempts at direct taxation will cause waste and friction disproportionate to the results. It has been suggested in this particular instance that the import-duty upon piece-goods should be re-imposed. Apart from the fact, as has been pointed out, that this is not a practical proposal, it appears to me that their re-imposition in the shape in which they existed before has become an impossibility. The growing competition between India and Lancashire will prevent their being re-imposed without their being of a protective character. I have not seen any practical proposals for raising the necessary money to meet the exigencies of the State but those which have been adopted by the Government of India, namely, the increase in the salt-duties and the tax on petroleum. The statement which was made by the Hon'ble the Financial Member on the last occasion is a very able statement. It shows very clearly the strain which has been imposed upon the resources of India by the continued fall in exchange, the diminished revenue from opium, combined with the necessity for expenditure on our north-western frontier defences and the expenditure in Upper Burma. It also shows very clearly—what I believe to be the case—that the public moneys in India are disbursed with strict economy and supervision in the administration of this vast empire. It is also clear, I think, that the Government has done what it can, and with considerable success by the Finance Commission, to prune and reduce establishment expenses to the extent which was within the scope of that Commission. But the outlook, with the possibility of a further fall in exchange and a great probability of a further diminution of the opium-revenue from the increasing growth of the poppy in China and other causes, together with the necessity of continuing our increased expenditure in Burma for some time to come, is not a cheerful one. I am, I believe, expressing the views of many when I say that the time has arrived for the Home authorities seriously to take in hand reforms which the Governor General in Council is powerless to effect or to deal with. The Home charges are what cause India to feel the exchange, and the Home charges are what India cannot deal with. They are very heavy and are capable of great reduction. The enormous expenses thrown upon India by the short-service system, and the constant movement of troops between England and India, involves enormous increased expenditure; and many competent authorities are of opinion that the increased expenditure brings no increase of efficiency, but rather the reverse. The expensive transport system and many points raised by the late Army

Commission are matters which the Home Government is bound to grapple with. The India Office itself needs a thorough overhauling, and considerable reductions might be made; for the times have changed, and it will almost certainly appear that the system is more cumbrous and expensive than is needed. The purchasing and spending departments at Home should be narrowly looked into. *Quis custodiet ipsos custodes?* There is also the further important question as to whether the old system of presidencies with separate Governors and Commanders-in-Chief, and separate armies, should be maintained; and this too presses for solution. I think, when all has been done that can be done on this side, we are entitled to look for some relief from the other side of the water. Having helped ourselves all we can, we are entitled to call on the higher powers for aid. Meanwhile, the government of this country must be carried on, but unless the Home authorities bestir themselves shortly they must expect to encounter grave and general dissatisfaction."

The Hon'ble SYUD AMEER HOSSEIN said:—"My Lord, since the introduction of the Bill last week, I have made enquiries in direct communication with the dealers of kerosine oil, to ascertain what would be the incidence of the proposed duty. The present market or contract value of each box containing two tins of the oil as entered in the invoice is Rs. 3-9. The duty at five per cent. would amount to about three annas per box. The oil is retailed in the bázár to the poor people in bottles. Each box contains 10 gallons of the oil, capable of filling up 48 quart bottles. So the 48 bottles will pay a duty of three annas or 36 pies, and therefore each bottle will pay a duty of three-fourths of a pie. The present retail price of a bottle of oil is one and half annas or 18 pies. The addition of three-fourths of a pie to the 18 pies will not be an appreciable burden to the poor people. The above calculations satisfactorily prove the unobjectionable character of the proposed duty. I have read with great interest the very able Financial Statement laid before the Council by the Hon'ble Finance Minister. I think that the hon'ble member has made out a good case for the increased taxation, which happily has taken the indirect form. I feel bound to say, my Lord, that nothing is so unsuited to this country as direct taxation. The law may not be so harmful or inequitable in theory, but its administration, in spite of the closest supervision of the controlling authorities, is nearly always unsatisfactory, and sometimes attended with a good deal of oppression.

"At the risk of treading on forbidden ground, I respectfully trust, my Lord, that, should necessity arise for a further increase of revenue, recourse may be had to that form of indirect taxation which was abolished by this Council a few years ago, and which, so far as India is concerned, is the least objectionable impost."

The Hon'ble RANA SIR SHANKAR BAKHSH SINGH BAHÁDUR said:—"I have fully considered the Petroleum Bill and the Statement of its Objects and Reasons. Since petroleum (including various kinds of inflammable liquids enumerated in the Bill) is an article of trade, it does not seem to me improper to levy a customs-duty on the same on its being imported into British India from any other country or island. My reasons for the above conclusion are as follows:—

"(1) the Government has, both on land and water, afforded every convenience and safety to the public by means of railways and steamers, which facilitate commercial communications with distant countries, and thereby cause the prosperity and development of commerce;

"(2) the Government, as far as possible, protects the property of every individual.

"Having these reasons in view, I entirely agree with the hon'ble member, Mr. Westland, in his proposal to impose a duty on petroleum; but, since at the same time it appears from the Statement of Objects and Reasons that the trade of petroleum has been on the increase for the last two years only, I beg to suggest that in the beginning, if deemed advisable, the rate of duty should be a little lower than that which has been proposed. In future, the rate may be raised if the said trade prove more flourishing, or if the present increase therein remain in after years steady."

The Hon'ble RÁJÁ PEÁRI MOHAN MUKERJI said—"The increased duty imposed upon salt a few days ago will so nearly meet the anticipated deficit, and the revenue expected from the proposed levy of a customs-duty on petroleum is altogether so small, that I was tempted for a moment to suppose that one of the objects for which this small measure has been proposed was to overcome the legal difficulty in the way of gratifying a widely and influentially expressed public desire. Such a supposition would, perhaps, have been wholly groundless, but I nevertheless feel beholden to Your Excellency's Government for having allowed me and my non-official colleagues in their Hon'ble Council an opportunity for discussing the main features of the financial budget for the ensuing year. The Hon'ble the Finance Member is to be congratulated on the lucid exposition of the financial position of the country which he has given to the Council. The inevitable expenditure for the defences of the north-western frontier and for

bringing Upper Burma under civilised administration would have been met from the ordinary and recurrent revenues of the country if the increased loss by exchange and the falling off in the opium-revenue and the gross earnings of railways had not caused a strain beyond the capacity of our revenues to bear. It is again a sort of expenditure which, on account of its being immediately unproductive, must be charged on the revenues of the year. To think of meeting it by raising a loan would be extremely unwise, as it would permanently add to the burdens of the country and make the financial position of future years much worse. Before we realise therefore a substantial saving of expenditure by such measures of economy as might be carried without diminishing the efficiency of the various departments of the administration, there is a clear necessity for a large addition to the recurrent revenues of the ensuing year. The increased salt-revenues will supply this addition and leave but a small deficit, and, as petroleum is not a very important article of commerce and a duty upon it is likely to touch the poorer classes, I suggested at the last meeting the propriety of looking to other articles for raising a revenue upon by means of an import-duty. Whether a duty on metals and hardware would not press more harshly than one on mineral oils, at least on certain races and classes of the people, is, however, a question which in the absence of carefully prepared statistics I do not wish to face. The very universality of its use points to pretroleum as an excisable commodity, and all objections to a duty upon it in this country, based upon humanitarian grounds, vanish when it is considered that the average incidence of the tax upon every family in the empire will be less than half an anna a year."

The Hon'ble MR. WESTLAND said:—"It has been particularly gratifying to myself, and I doubt not also to the other members of Your Excellency's Government, to find that the proposals we have made for the restitution of our financial position have been so generally accepted by those who are most qualified to pronounce an opinion regarding them. I am afraid that a sense of relief from taxation in a more unacceptable form may have conduced in some degree to the general acceptance of the enhancement of the salt-duty. For myself, therefore, I would not carry this public approval of our policy so far as to remove the reluctance with which we had recourse to the salt-duties, and I shall be very glad when the time comes in which we can relegate the eight annas, which we have now re-imposed, back to the position in which Sir Evelyn Baring placed it, namely, that of a reserve to be appealed to in times of trouble. But our first duty undoubtedly was to put ourselves right with the world, by making our revenue adequate to our expenditure, and I think it is a matter on which we may well congratulate ourselves that our full and frank statement of our financial position

has enabled the public to realize the difficulties which we had to meet, and to give its approval to the means we are adopting to escape from them.

"It is only fair that I should say we have no intention of now folding our arms and, having secured what we hope may be a balance on the right side, of relaxing our efforts in the direction of economy. So long as our financial position is dependent upon the maintenance of a salt-duty of Rs. 2-8, we must regard ourselves, in the management of our expenditure, as still under the same obligations which a deficit would impose upon us. We must also do our best in the development of our existing revenues. I look hopefully to a considerable increase in the excise-revenues, and believe that a great deal might be done in Northern India by the introduction of the methods which in Bombay and in Madras have so powerfully contributed to the increase of revenue under this head. I believe also that we have far from exhausted the possibilities of the provincial system, and I am of opinion that we may find in further development of it a means of increasing our financial strength. By these, and by other means, we must strive to bring more near to us the date when it may be possible to examine our revenues for the purpose of remission. My hon'ble friend Mr. Steel has recommended to our notice in this respect the rice-duties, which have certainly been repeatedly condemned on economic grounds, and which only financial necessity has preserved in existence. But I am afraid that remissions of revenue have at present only an academic interest, and it is only waste of time to discuss now what will most likely have to wait for our successors to decide.

"And for the same reasons I must also claim exemption from the duty of saying anything about the import-duties generally. The policy of their remission has been referred to more than once, both in former debates and during the present one. But the policy, I submit, must be regarded as a closed book. The practical questions which submit themselves for our decision are sufficiently numerous, and sufficiently important to occupy our whole attention; and the practical question with regard to the import-duties is not whether they should have been remitted or not, but whether, having been remitted, it is practicable now to re-impose them. To this question I do not think there can be two answers. Manchester and Bombay are now such rivals that it would be quite unjustifiable to tax Manchester with an import-duty unless we also taxed Bombay with an excise-duty; and the difficulties in the way of an excise-duty, especially with reference to mills which lie in Native territory or which might be transferred to Native territory, are such as to place the proposal outside the range of practical politics.

"The Hon'ble Rájá Peári Mohan Mukerji has in connexion with this subject referred to the propriety of re-imposing the duties on metals and hardware. The tax upon metals yielded only 10 lakhs, and the tax upon hardware amounted to under 3 lakhs. Apart from the general inadvisability of re-imposing import-duties, there are practical considerations against the re-imposition of particular duties the proceeds of which would be small; for it can never be worth while to introduce the general machinery of a customs-duty for the purpose of obtaining the small sum of 13 lakhs. The justification for the imposition of a duty on petroleum lies in the fact that it can be done under the existing conditions of the trade with practically no additional expense or restrictions upon the trade. That would not be the case in regard to the imposition of duties on metals and hardware; and, moreover, I do not endorse the contention of my hon'ble friend that a tax on metals and hardware will only fall on the rich and not in any respect on the poorer classes.

"My hon'ble friend Mr. Steel has also referred to the claims made on behalf of litigants that we should reduce the fees payable by them, and the same subject was taken up in the letter, to which he has made allusion, of the Chamber which he so ably represents. For one reason I am glad that the reference has been made, because it gives me an opportunity of removing what seems to be a very general misapprehension. I shall not discuss the question whether the administration of civil justice may or may not be made a source of revenue just as reasonably as any other Governmental business: that is a question on which, especially in India, there may very well be two opinions. But I would simply ask the question—On what ground is it supposed that, as matters stand, the Government makes any profit at all? No figures that I have ever seen establish such a conclusion. It is easy to show that the revenue from court-fees more than covers the cost of the salaries of officers and the establishments employed in connexion with Civil Courts; but, before a fair account can be made up, numerous other items have to be regarded. You have to reckon, for example, the cost of pensions and of leave-allowances, and the cost of providing and maintaining buildings. It is not a very easy thing to do, but we have made elaborate investigations upon this basis; and the result, so far as we have made it out, does not support the view which has been too readily assumed by my hon'ble friend and by others. To mention only the case of the larger provinces: there is a considerable loss in Bombay; in the North-Western Provinces we also overspend the income by about 10 per cent.; in Madras we make a saving of about 5 or 6 per cent.; and in Bengal the saving is probably somewhat larger than that. The smaller provinces show a loss in every case. I cannot state in actual figures the result for the whole of India, but so much at least appears

evident, so far as our investigation has gone, that very little, if any, profit is made out of the whole business, and that litigants do not, on the whole, pay more than is required for the maintenance of the Courts of law. I think it is very important that these facts should be known. The high judicial authorities who are charged with the over-sight of the administration of justice are necessarily, in the plain exercise of their duty, continually pressing for improvements and additional expenditure in all directions; and they have a strong case if it were really true that Government made the administration of civil justice a source of revenue. But, as this is not the case, India cannot afford to pay for perfection in that department any more than in any other, and the Government is not justified in setting aside financial considerations in dealing with these subjects. It is, to say the least of it, doubtful how far the reduction of the court-fees duties, even if carried out, would give the anticipated relief to litigants. Although I cannot speak from personal experience, I believe the payment of court-fees forms but a small proportion of the total of the law charges incurred by a litigant, and the reduction of their amount would make no great difference in the total of the charges which the litigant has to meet. But in any case the facts I have stated will show that, so far as the Executive Government goes, there is very little chance of our being able to afford any reduction of the revenue from court-fees as long as the expenditure bears its present proportion to the receipts; and that, if the public consider their burden too heavy, the only condition on which relief can be afforded is that by some reforms in procedure or system, or by some other means, a better tale of work be obtained from the existing Courts.

"My hon'ble friend Mr. Steel has referred also to certain complaints which have been put forward as to the hardships entailed upon the owners of salt in bond. The fact is, according to information which I also have received, that the owners of salt in bond happen also to be owners of larger quantities of salt in course of transit by sea; and, as he has explained, these owners, having large quantities of salt at sea in respect of which the provisions of section 37 of the Sea-customs Act applies, are able to realise large and totally unexpected profits; and while they are engaged in selling, at this unusual profit, the salt they have at sea, they of course put off, in the meantime, the sale of the salt they have in bond. The hon'ble member will, perhaps, be extremely surprised to hear that these merchants have made this the subject of a memorial to the Government, in which they refer to the action of the Government in suddenly increasing the salt-duties as imposing upon them a "ruinous loss." "Ruinous loss" is certainly a curious term to apply to an operation that has brought them an unexpected profit of some lakhs of rupees. I have no doubt that they would like to have

its operation extended also to the duty upon salt in bond, by which, of course, their profits would be enhanced to double the amount they will now receive. But, when an importer deliberately chooses to bond his goods instead of bringing them to sale when first landed, he must accept the risk of an alteration of the duty at the time at which he chooses to bring the goods for consumption. It is very pleasant to learn that the notification of the enhancement of duty has not as a matter of fact involved any loss to the salt-merchants of Calcutta, but I confess it would have been preferable if the operation of the Sea-customs Act had not entailed a loss to the Treasury and a gain to them of the duty upon salt in course of transit by sea.

"On one other point, I wish, with Your Excellency's permission, to offer some observations. The proposal has been made that our present difficulties may be evaded by the plan of separating Burma from the rest of India, constituting it a separate province and borrowing against its future revenues. For such a plan, of course, separation from India must be absolute and complete; the mere separation of the Burma budget into a separate account, while still remaining part of the revenue and expenditure for which the Indian Government are responsible, would mean nothing at all. You do not get rid of expenditure, and of the liability that it imposes upon you, by the simple process of writing it under a separate account. But this separation of Burma into a new and separate financial entity is one of those proposals which crumble to pieces the moment you attempt to give them definite practical shape. The whole basis of it, of course, is that the local revenue is not at present, and is not likely for some time to come to be, equal to meeting the expenditure. We cast Burma adrift on the express ground that it is for practical purposes insolvent, and financially not worth keeping. But who will lend money upon the security of revenues such as these? Burma has no credit; it cannot have, if it is disparaged at the very start by such a policy. Whatever money is raised therefore must be raised on the credit of India; and we come back to the very methods to which I put forth the objections by anticipation last week. There is no difference whatever between the plan of opening a new Burma account and borrowing on the credit of India to meet the deficit it is to show, and the plan of charging the expenditure as Indian expenditure and borrowing instead of raising revenue to meet it. The latter is the honest and straightforward way of stating the facts; the former is an elaborate device for concealing the truth from yourself.

"A financial separation is therefore a practical impossibility, but, even if it were not so, it would be a policy to which we have no right to resort. The

annexation of Burma differs in no respect from the various annexations which we have made from time to time, and which have built up the India we now know. One after the other they have been incorporated in the empire, brought under one common administration, one common system, bound together by ties—administrative, political, military and commercial—which render any idea of separation an impossibility. Some provinces are rich and advanced, some are poor and backward; but all have benefited enormously by the linking together in a common system. We have no more right to cast Burma out of the common brotherhood and to tell it to bear its own burdens than we have to select the poorer portions of Bengal or Assam and to tell them that the wealth of their neighbours cannot be applied to giving them a share in the common civilization. For thirty or forty years Burma has been a member of the empire, has borne its share in its burdens, has paid like the other provinces its contribution towards the common imperial expenditure. After having obtained from it for so many years all the advantages which arise from the broader basis on which the empire has been built, and the measure of financial relief which is due to its participation in the common burdens, I cannot conceive by what right we can now impose upon it the burden of the new conquest and tell it that it must from its own resources and without help from us bridge over the interval that has to elapse between our first occupation of a new and undeveloped province and the time when it ceases to be a burden and becomes a support to our financial position. For Upper Burma, its annexation and its administration, we, the Indian empire, are responsible; and it would be as unjust politically, as I believe it would be in the end financially foolish, were we to attempt to pass on to others' shoulders the burden of the responsibility we have deliberately assumed. The time has not yet come when we need stand aghast at our own greatness and beg one of our own minor provinces to take off our hands the responsibilities which that greatness imposes upon us."

The Hon'ble LIEUTENANT-GENERAL CHESNEY said:—"I did not intend to trouble the Council with any remarks to-day, but something has been said by my hon'ble friend Mr. Steel in the course of his very interesting and lucid statement which tempts me to offer a few observations on the subject. I think we must all be indebted to the hon'ble member for having in a few words of admirable common sense explained away a great deal of the nonsense which has been talked during the last few days about the irregular action of the Government in regard to the mode by which the salt-duty has been enhanced; and it is very gratifying to find the general policy of the Government supported by so high an authority. But one remark was made by him to which I venture

to take exception. My hon'ble friend spoke in terms of blame of the action of the Government in 1882 when they reduced the salt-duties: he spoke of the 'reckless' reduction of the salt-duties in 1882. I venture to demur to that expression as being a correct interpretation of the facts of the case. The Government in 1882 had a considerable surplus in hand; and here I might venture to remind the Council that India, whose financial condition my hon'ble friend Mr. Evans considers to be gloomy, shares with England the happy position which, with the single exception of the United States of America, it alone possesses among all civilised countries, of ever having a surplus in any years. If you examine the financial condition of all the countries in Europe, there is one point in which they all agree, namely, that there is uniformly a deficit; and uniformly a fresh loan, every year. The revenues of France, Russia, Italy, and I believe Germany also, year by year fail to make good the necessary expenditure, and the deficit has to be filled up by the inevitable loan. India has had occasionally to borrow money, but it has fortunately had during the last thirty years several years of surplus. India and England are the only two countries in that happy condition. Now, as regards the mode of dealing with a surplus, I think we may take a lesson from the practice which is followed in England. In England, when there is a surplus the practice used to be to take off some of the import-duties in order to cheapen articles which are in common use. After a time, when the process of reduction of the import-duties had been carried to a very great extent, then English financiers began to operate upon the income-tax. The practice having been dropped of the further remission of import-duties, there were practically only two ways of dealing with a surplus—to reduce the income-tax or to pay off a portion of the national debt; and the former alternative has been the one usually adopted. Now, in this country the salt-duties practically take the place of the income-tax in England. The income-tax in England is paid by a large proportion of the community, whereas in India the income-tax falls upon a very small percentage of the people, and it is only by dealing with a tax which affects the mass of the community that any considerable operation is possible, while, as has been repeatedly pointed out, the salt-duty is a duty which can be increased or reduced at will without any additional expenditure for collection. Now, there were two courses open to the Government of 1882—to lower the salt-duties or to pay off debt. Suppose the Government had not pursued the 'reckless' course of reducing the salt-duties which had been commented upon by my hon'ble friend Mr. Steel; what would have been the certain consequence of maintaining that tax at the higher rate? Anybody acquainted with the history of Indian administration will know that there could have been but one certain result—the expenditure would have increased

to the full extent of the surplus in a very short time. The Government of India with a surplus to dispose of would be immediately subjected to the pressure of the Local Administrations for larger grants of money, and we may be sure it would be inundated with proposals from all directions—from admirable motives no doubt—for the means of improved administration in all branches, and the surplus would soon be consumed. If, therefore, the salt-duties had not been reduced in 1882, the Government of India would have been left at this period without that valuable resource to enable it to retrieve its financial position. I venture to think that it is always incumbent upon the Government to pare down its revenue as well as its expenditure, and that a good surplus of one year should not be made available for increased expenditure, but should rather be applied to the reduction of taxation.

"I wish also to make one observation in reply to what has fallen from the Hon'ble Mr. Evans as to the gloomy prospects of Indian finance. In this my hon'ble friend echoes a good deal of what has been said during the last few days about the state of the Indian finances in many different quarters. I saw the other day in a highly respectable newspaper published at Allahabad, which generally writes in a very lucid strain, a reference to what it called the present financial crisis Now I am old enough to recollect a good many financial crises. First of all came the great crisis of the mutiny, when forty millions had been spent, the collection of the revenue had been stopped over a large part of the country, and the treasury was empty—an occasion when it might indeed appear as if we were on the eve of national bankruptcy. Yet three years afterwards we had already arrived at a time of prosperity and a handsome surplus. Then, in 1876, there was a crisis during the famine, when we had to spend no less than sixteen millions merely to keep people alive. Then came the great drain upon the Government during the time of the Afghan War, when twenty millions were spent. Then again you heard the old story about financial bankruptcy. Three years afterwards, and during the time of Sir Evelyn Baring, he was able to bring out a prosperous budget with a large surplus. In face of these financial crises I think the language used in regard to the present state of things is a little hysterical. It is quite true that under conceivable circumstances, if all things combined to go wrong together—if exchange continued to go down—if the revenue from opium continued to fall, if trade became more depressed, then certainly we might be in a bad way. But, as my hon'ble friend Mr. Steel has reminded us, this is not a time of mercantile or social depression. The very loss by exchange, which is one of the causes of difficulty for the Government, in the opinion of a good many competent judges is a source of

great prosperity to the country. I think, therefore, that, if we look back at the history of these real-financial crises through which the Government has safely emerged, we need not be alarmed at the present state of affairs, which, compared with what has happened in the past, is merely a financial ripple on the water."

His Excellency THE PRESIDENT said:—"Our hon'ble colleague the Finance Member may certainly be congratulated on the candid and generous manner in which his financial statement has been received by all the members of this Council; and it is gratifying to the Government to feel that not only do we possess the unanimous approval and support of the Council, but that we may fairly conclude that the views which have been expressed by Mr. Steel in his very weighty speech, by Mr. Evans and by all the Native members are the reflex of that intelligent public opinion which they are so well entitled to represent. The question has been so ably dealt with by every member who has spoken, and the consensus of opinion is so general, that it is unnecessary for me to trouble the Council further. Of course the real difficulty attending our financial policy is the instability of silver. With an uncertainty of that kind introduced into all his calculations, no Finance Minister can ever enjoy any real repose. He must be always conscious that in the unknown future there may exist contingencies which will upset all his calculations and destroy the anticipated equilibrium in his budget; but from the very nature of the case all that the Government can do is to exercise its best intelligence in calculating the probabilities of the actual situation and leave the ultimate issue in the hands of Providence. As I have already had occasion to say, had it not been for the fall in silver which has made me three millions a year a poorer Viceroy than I was when I first came to the country, notwithstanding even the fall in opium and the expenditure in Burma, I think we might have tided over our present difficulties without any resort to increased taxation. From what I have recently heard from our Minister in China it does not seem likely that any very considerable change in the mercantile relations between China and India as regards opium is likely to ensue. Again, though we have no right to allow such an anticipation to influence our practical policy, we may fairly hope that our railway receipts will also recover. With regard to Burma, there is no doubt that, although during the last year the expenditure has been very heavy,—heavier even than was anticipated,—it will be a diminishing charge, and even in the budget we are now preparing a change for the better will be shown. Moreover, it must be remembered that Lower Burma may be expected, if not altogether, at all events to a considerable extent, to be able to carry Upper Burma on its back.

It is true the surplus revenue of Lower Burma which annually accrues over and above the expenses of its own administration, and now amounts to nearly a million, only represents the fair share which that province might be called upon to pay towards the general imperial expenses of administration; but, on the other hand, it is clear that, if Lower Burma did not exist, the large sums which for some years past we have received from thence would have had to be supplied by India herself from extra taxation from which she has now been relieved. Consequently, were the accounts of the two provinces to be united, the deficit in regard to Upper Burma, even for the present, will be found to be inconsiderable. It will be interesting to the Council to know that not only are we daily receiving satisfactory proofs of the rapidity with which Upper Burma is settling down and order is being established, but that we have made most satisfactory progress in dealing with all those subordinate questions which affect the Shan States and our relations both with Siam and China. It has been stated that this Government has determined upon the subjugation of the Shan States and that we are about to send a *corps d' armée* in order to carry this purpose into effect. Such an observation only shows how very great is the misconception which prevails in regard to the political and geographical condition of what are known as the Shan States. As you are aware, Burma may be described as a broad valley traversed by the Irrawaddy and the Chindwin, with the Arakan mountains on the western side and a corresponding high plateau on the eastern side. It is upon this plateau, which extends as far as the Salween, that the Burmese Shan States are situated. These States have always been subject to Upper Burma, and, when we took possession of that country, we sent messages to their various Chiefs that from henceforth they were to regard Her Majesty the Queen as their Sovereign. This information was received upon their part in a satisfactory manner, and they suggested that we should send up some officers to settle the exact nature of their future relations with us. We have taken advantage of the cold weather to despatch two political officers into the Shan States accompanied each by a small column. These gentlemen have traversed the whole district from one end to the other in perfect security, and have been everywhere received in a cordial manner, both by the population and by the various Chiefs. Not only so, but our agents have met on the extreme eastern frontier of Shan Burma the authorities of Siam, and have come to a preliminary understanding with them as to the frontier which is hereafter to divide the Shan States under British rule from those under Siamese jurisdiction. But what perhaps is even a more gratifying feature in the situation is the fact that the Government of His Majesty the Emperor of China is exhibiting towards us a most friendly spirit, and is doing everything we could desire to render

the settlement of that part of Burma which borders on China easy and successful. The Viceroy of Yunnan has received instructions to order the officials on the Chinese frontier to cultivate friendly relations with us, and the effect of this action upon the part of China is now becoming very marked. I may mention, as an additional proof of the desire of China to exhibit a conciliatory spirit towards the Government of India, that she is using her best efforts to induce the garrison of Tibetans who have passed beyond their own frontier and have built a fort on a road which was made by the Indian Government in Sikkim, and over which we have definite and strict legal rights, to retire within their own territories. Consequently, although, as must always be the case in a new province recently added to the empire, a very considerable outlay will be necessary in Burma with the view to furnishing it with roads, jails, barracks and public buildings, and for the purpose of opening up what are undoubtedly its large material resources, I do not think that any one need apprehend that our expenditure in Burma will eventually prove a source of financial embarrassment to the Indian Government. Thanking the members of the Council for the patience with which they have listened to my few observations, for the generous spirit in which they have received the financial statement which has been placed before them, as well as for the valuable suggestions which have fallen from various members, I proceed to put the motion, namely, that the Bill to provide for the levy of a customs-duty on petroleum be referred to a Select Committee consisting of the Hon'ble Messrs. Scoble, Whiteside, Steel, Halliday and Westland."

The Motion was put and agreed to.

The Council adjourned to Friday, the 10th February, 1888.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 8th February, 1888.

Government of India Central Printing Office.—No. 391 L. D.—9-2-88.—308.—R. B.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 10th February, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland.

The Hon'ble Rana Sir Shankar Bakhsh Singh Bahadur, K.C.I.E.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.

The Hon'ble W. S. Whiteside.

The Hon'ble J. W. Quinton, C.S.I.

The Hon'ble R. Steel.

The Hon'ble Sir Dinshaw Manockjee Petit, Kt.

The Hon'ble F. M. Halliday.

INDIAN TARIFF ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. WESTLAND presented the Report of the Select Committee on the Bill to provide for the levy of a customs-duty on petroleum. He said:—

"Last week I mentioned the two objects which would mainly have the attention of the Select Committee. The first of these was the definition of petroleum, and the second was the form in which it was proposed that the duty should be levied. As regards the definition, the intention was to levy a tax on those ordinary qualities of petroleum which are used for illuminating purposes. There are special qualities of oil which are imported, mostly of a more expensive nature, but which ought rather to be regarded as a raw material for manufacture. They are used for batching fibres and for lubricating machinery. The object we had in view in examining the definition was to frame it in such a

manner that the tax would be levied upon those cheaper and ordinary kinds of oil used for illuminating, and at the same time would not reach those qualities which are imported purely for lubricating and batching. The solution of this difficulty we found in the Petroleum Act. That Act provides that, whereas ordinary petroleum, when it is imported, is subject to certain restrictions for safety's sake, that class which is required and imported for lubricating purposes, and of which the flashing point is 200° or over, is exempted from these restrictions. The Petroleum Act does not mention oils which are used for batching, but I find that in practice batching oil is treated in exactly the same way as lubricating oil. Batching oil, like lubricating oil, is above 200° flashing point. I am informed that oil which is below that flashing point can be used for batching; but the Chemical Examiner to Government states that, so far as specimens of batching oil have been submitted to him, he has not received any specimens of which the flashing point is below 200°. It is obvious, therefore, that by this 200° standard we can practically separate the two classes of oils which are imported—those which are imported for illuminating purposes and which we desire to tax and those special qualities which are imported exclusively for lubricating and batching purposes and which we desire to exempt. The definition, therefore, exempts from taxation oils of which the flashing point is 200° or over, and which are intended for lubricating and for batching purposes.

"Then, as regards the form in which the duty is proposed to be levied, the Select Committee have accepted the recommendation of the mercantile community to impose a fixed duty instead of an *ad valorem* duty. It is obvious that the levy of a fixed duty is much more convenient than a duty assessed *ad valorem*. The objections to it are mainly that the poorer classes, who naturally use the cheaper qualities of oil, are, by a fixed duty, made to pay a higher rate of taxation than the wealthier classes, who naturally use the more expensive qualities of oil. But enquiries show that in the case of kerosine oil there is very little difference in price between the lowest qualities which are imported and the highest. I find that, taking, for example, Rs. 3-13 as the average price of imported oils, the cheapest quality is 7 annas below that and the dearest 7 annas above it. The values therefore being so near uniformity, it is obvious that a fixed duty will in its operation differ not very essentially from an *ad valorem* duty; and therefore it may by preference be adopted, as in other respects its simplicity recommends it. I may mention that there is a very small quantity of high priced oil imported. This high priced oil will, by the levy of a fixed duty, escape its proper proportion of taxation; but it is better to accept the inconvenience of an inequality like this than the greater inconvenience of applying

all the difficulties of an *ad valorem* duty to the much larger quantity of the ordinary oils which are imported.

"Then, as regards the amount of the duty which we have inserted in the Bill, we have again accepted the recommendation of the mercantile community. The rate is a little heavier than that which was proposed in the original Bill. It comes to about 8 per cent., whereas, as originally proposed, the rate amounted to only 5 per cent., and the proceeds from the higher rate of duty are computed at about 10 lakhs, whereas formerly it was computed at 6½ lakhs. But the best opinion is that the trade can easily bear the higher rate of duty. Petroleum has so great an advantage over other illuminating oils in respect of the cheapness of its production that this duty of half an anna per gallon will not materially modify that advantage. We are not in a position at present to refuse even 3½ lakhs which this additional rate of duty suggested by the mercantile community will give us. And it must be remembered in its favour that a tax on petroleum will be for the most part a tax upon the well-to-do classes, as petroleum is chiefly used in municipalities and large towns, while the ordinary rural villager still adheres to the dim light of his ancestors and does not understand the arrangements of glass and brass which are necessary for the consumption of kerosine.

"I have one more remark to make, and that is to explain that we have dopted this fixed rate of duty per gallon in preference to a fixed rate at so much er case. There are two reasons for this: one is that which was given by the Hon'ble Mr. Steel at the last meeting of the Council, when he explained that it was perfectly possible, and even probable, that in a short time petroleum would be imported not in cases but in tanks; another reason is that the cases which arrive often suffer damage during transit, and the importer finds on their arrival that the cases are partly leaking and empty. The custom is for the importer, or rather the purchaser, after landing the cases, to make up, out of a number of leaky cases, a certain number of full cases. The result of applying the tax per gallon will be to avoid any question about charging empty cases otherwise than according to their ability to pay."

The Hon'ble MR. WESTLAND also moved that the Report of the Select Committee be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

POLICE BILL.

The Hon'ble SIR CHARLES AITCHISON presented the Report of the Select Committee on the Bill to amend the law relating to the Regulation of Police. He said :—

"It is unnecessary for me to trouble the Council with any lengthy remarks. My hon'ble predecessor Sir James Peile, in moving on the 6th of October last for leave to introduce this Bill, explained that the necessity for it lay in the difficulty experienced in dealing with the police of the railway-system under the general Police Act of 1861 and under the local Police Acts of the presidencies of Madras and Bombay, which restrict the employment of police-officers to the presidency, province or place of the police-establishment of which they are members. These Acts were passed more than a quarter of a century ago, but with the universal facilities of communication, both by road and railway, which have been introduced, a state of things has been developed which could not be realised when the police, as now constituted, was organised. In 1861, when the general Police Act was passed, the entire length of railways open to public traffic was only 1,588 miles; in 1887 it was 13,867 miles—having multiplied more than eight-fold in the interim. In 1861 the railway-lines were either all within the jurisdiction of one Local Government or of two conterminous Local Governments; so that any break in the police-jurisdiction could easily be arranged for. Now the great trunk lines of railway are completed, and people may travel from one end of India to another by various lines. These lines necessarily pass through many jurisdictions, and with each change of jurisdiction there is a break in the continuity of the police-arrangements. Take, for example, the North-Western Railway, where there are at present no less than seven different forces of police under the control of various authorities. This state of things presents serious difficulties in the prevention and detection of crime in the altered circumstances of the country. The Bill of which I now present the Report of the Select Committee proposes to remove these difficulties, first of all, by enabling Government to create general police-districts embracing two or more jurisdictions through which a railway-line may pass; secondly, by enabling the police of such general districts to act outside the railway-boundary in subordination to the Local Government having jurisdiction in the particular place. The opportunity has also been taken to provide for the employment of police-officers beyond the province to which they belong. I have only to add that the principle of the Bill has been very generally approved by the Local Governments who have been consulted."

At the conclusion of the business of the Council, His Excellency THE VICEROY said :—

"GENTLEMEN,—It would be scarcely respectful that I should allow the members of this Council, with whom I have been so frequently associated in devising legislative measures for the good of this country, to separate without referring to the announcement, which was made public yesterday, that I had obtained the permission of Her Majesty's Government to resign the Viceroyalty of India at the end of the present year. It may be well imagined that no one in my situation would take such a step without feeling both pain and regret; for the post I am now filling is at once the most honourable and the most important that can be held by a subject of the Crown. It was with no light heart that I accepted it, and it is with a deep sense of the responsibility I owe to my Sovereign, to my fellow-countrymen at home, and, above all, to the inhabitants of India, that I have endeavoured, however imperfectly, to discharge the laborious duties attaching to it. I desire it, therefore, to be understood that I have been actuated by imperative private considerations alone in pursuing the course I have adopted. From the time I set foot in India till the present moment not a shadow of difference has arisen between myself and the Government at home, nor, as I trust, have I in any way forfeited the confidence of the Secretary of State. Indeed, I cannot sufficiently express my deep gratitude for the generous support I have received at the hands of the successive Ministers who have presided over the India Office since 1884. Neither has anything occurred in India itself to render my position as Viceroy less agreeable or less attractive than it was when I first came to the country. On the contrary, from the entire European community, from all classes of my Native fellow-subjects, whether Hindu or Muhammadan, whether Princes or private persons, whether at Calcutta or in other localities, I have received constant and innumerable tokens of sympathy and good-will. I only wish I had been better able by my public exertions to show my appreciation of so much loyalty and kindness. Domestic reasons alone have induced me to return home a year before the regular effluxion of my term; but, after all, it must be remembered that in limiting my service in India to four years I shall have stayed in this country as long, or almost as long, as any of my immediate predecessors; and four years of such constant labour and anxiety as a Viceroy is called upon to bear is almost as much as is good for any one; so that I cannot but feel it may be for the public interest that I should resign my charge into the hands of a younger man, especially as the general political

condition of the country, whether we regard its domestic affairs or its external relations, is prosperous and peaceful. Had it been otherwise, I would have gladly sacrificed every personal consideration in the cause of duty. With regard to my successor, all I can say is that, had the choice lain with me, he is the very person whom I would have suggested, possessing as he does every quality to recommend him to the confidence of the Crown and of the nation. A grandson of one of our most venerable statesmen, and initiated from his earliest youth in the conduct of serious political affairs, he is now discharging the duties of Governor General of Canada in a manner equally satisfactory to the people of that great Dominion and to the Government at home. He is in the prime of life, and married to one of the most charming ladies that ever graced London society; and, whether as presiding over the social or the political world of India, I prophesy for him universal popularity and acceptance. Gentlemen, I feel that I have already occupied you too long with my own personal affairs, but my great gratitude for your constant kindness and assistance, and the friendly regard in which I hold every member of this Council, have induced me to trouble you with these observations."

The Council adjourned to Friday, the 17th February, 1888.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 16th February, 1888.

Government of India Central Printing Office.—No. 455 L. D.—17-2-88.—308.—A. F. dee.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 17th February, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble J. Westland.
The Hon'ble Rana Sir Shankar Bakhsh Singh Bahadur, K.C.I.E.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.
The Hon'ble J. W. Quinton, C.S.I.
The Hon'ble R. Steel.
The Hon'ble Sir Dinshaw Manockjee Petit, Kt.
The Hon'ble F. M. Halliday.

POLICE BILL.

The Hon'ble SIR CHARLES AITCHISON moved that the Report of the Select Committee on the Bill to amend the law relating to the Regulation of Police be taken into consideration. He said:—

"Having at the last meeting of the Council explained the object of the Bill, and the manner in which it was proposed to meet it, it does not occur to me that any remarks on the details of the Bill will assist the Council in coming to a determination on it."

The Hon'ble RÁJÁ PEÁRI MOHAN MUKERJI said:—"This is one of those measures in which the legislature must content itself with investing Your Excellency in Council with the proper powers for devising a scheme and making rules for working it. The necessity for an imperial police service becomes evident when it is considered that, by reason of the rapid extension of railways, the local police of different districts and provinces have to deal not merely with

local criminals but others who come from distant parts of the country. But the inconvenience of having an inter-provincial police service should not be lost sight of. It would be difficult for such a service to utilise the valuable local knowledge possessed by the police of different districts and provinces, and there is also the graver question as to how to regulate the subordination of officers when an imperial service overlaps the local service and exercises a jurisdiction of its own. These are matters which will, no doubt, be provided for by the rules which will be made under the Act."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

METAL TOKENS BILL.

The Hon'ble MR. WESTLAND moved for leave to introduce a Bill to prohibit the making or issue, by private persons, of pieces of metal for use as money, and the making of coins in resemblance or similitude of coins of Foreign States. He said:—

"Before explaining to the Council the circumstances which have led to the introduction of this Bill, I wish to state at the outset that the Government has no intention of introducing any crusade against what are ordinarily known as 'dumpy' pice. These pice have been in circulation in India before the British Government held it, and they no doubt are very convenient to the people, whose transactions are on such a small scale that they cannot be adapted to the legal unit of the rupee. In the remoter parts of the districts of the North-Western Provinces and the Punjab hardly any copper coin is seen but these dumpy pice. No doubt, as commerce and trade become more developed, the people will realise the advantage of having a copper coinage to which the character of a legal tender attaches, but it would be quite unjustifiable for us to interfere with the actual current circulation of the dumpy pice. It would be something like a revolution if some millions of villagers in the remoter parts of these districts were to wake some morning and find that the whole of their store of copper coin had become valueless, and that they could not make their ordinary day's purchases without rendering themselves liable to a prosecution under the law. To interfere with coin in such familiar use is far from our intention; but it would be equally unjustifiable if we were to permit private persons to engage

in the manufacture of these pice for their own profit, and thus to interpose obstacles to that gradual process by which ultimately a better condition of coinage and currency will be attained in these places. As matters at present stand, the manufacture of these dumpy coins is unfortunately not within the limits of the Penal Code. The reason is that, although the counterfeiting of coins is a severely punishable offence, coin itself is defined as 'metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.' Dumpy pice are not issued by the authority of any Government in order to be used as money, and, therefore, a person who makes coin of that kind does not come within the penalty attached to the offence of counterfeiting coin. It is possible that such coinage may come within some other section of the Penal Code, but it is assuredly proper for the Government, if it intends to suppress the coinage, to take up the matter directly, and to define the making of these pice as—what to all intents and purposes it is—a fraudulent fabrication of coin.

"Information has recently reached the Government from several places which makes it evident that this coin is coming to be manufactured and issued in several parts of India. The first information we received was from the Gya district. The district authorities brought to the notice of the Accountant General of Bengal that a local firm, calling themselves Jadu Roy, Ramgopal & Co., had established a factory for dumpy pice and were flooding the district with them. They had actually issued a proclamation of which I have a copy in my hand, and which I shall read to the Council, as it shows the extent to which they had carried on the practice. The notice runs thus:—

"'Notice is hereby given to the public that Messrs. Jadu Roy, Ramgopal & Co., having taken all necessary legal steps for the manufacture of Gorakhpuri pice, and having, on the 17th June, 1886, informed the District Magistrate of Gya the fact of such manufacture and sale, opened manufactory at Kándi Nawada near Gya, where they manufacture and issue the said pice of superior copper and equal weight to that of the current pice, and are now ready to sell the same to the public at the rates given below, and they beg at the same time to assure the public that the sale, purchase and use of their pice are not illegal and therefore not penal. Bázár rate for retail sale, and one pice more per rupee than bázár rate for wholesale.'

"It will be observed that this notification gave it to be understood that these pice are being manufactured by these private persons under the authority of the Government. Of course, there was not a word of truth in that statement, but at the same time they must have discovered that the penal law was not sufficient to reach them. When their proceedings were brought to the notice of the Gov-

ernment of Bengal in December, 1886, that Government issued a proclamation stating that the manufacture was unauthorized, and that the pice would not be received in the Government treasuries or post offices. It was hoped—but I do not know how far the hope has been realised—that by this means the circulation of the pice would be stopped.

"A short time after this date the pice were found in the districts near Gya, namely, Shahabad, Sarun and Gorakhpur; and in some or all of these districts it was found necessary to issue a proclamation informing the people that these pice were not pice of legitimate manufacture, and would not be accepted in any Government treasury or institution. The operations of the firm seem to have extended still farther. In May, 1887, the Deputy Commissioner of Hissar, in the Punjab, reported that a local trader, Jai Ram Dass, had presented Jadu Roy's proclamation and solicited permission to commence a similar manufacture. And in July a Mr. Carapiet, of Mirzapur, solicited a similar permission from the Government of the North-Western Provinces, stating that he had heard that an authorized manufacture had been started in Gya and other places. The Magistrate of Mirzapur, to whom the application was referred for some enquiries, stated that he had received similar applications from other people, but, of course, had rejected them all. During the same months the Collector of Saharanpur brought to notice that his district was being flooded with dumpy pice known as Mansúrí pice, which he had reason to believe were manufactured at Jagadhri in the Ambala district and at Nayanagar near Ajmere. We could not stop the circulation, but we directed that the Mansúrí pice should be refused by Government and railway officers and the municipalities, and we made enquiries regarding the alleged manufacture.

"About the same time information came independently from Ludhiana, from the octroi-collectors, that large quantities of the pice had been imported there under consignment to local traders, who were busy issuing them in large quantities. They were described as coming from Nayanagar near Gya, which appears to be a mixture of the names of two of the places of manufacture already noticed. The sale of these pice was going on openly, one trader stating that he had disposed of Rs. 15,000 worth within a year. Moreover, there was also a local manufacturer whose name was Gauri, and whose issues received the name of Gauri-wala pice. Other pieces of information have reached us, but it is evident from what I have said that the trade is openly practised, and that the time has come when Government must choose between accepting it and putting it down.

"It is unnecessary to state here such elementary principles as that the State has the right to the profit accruing by the issue of token coin, and that moreover the State is bound, for the convenience of the people, to supply, for the purposes of circulation and exchange, coin that shall have the character of legal tender, and to protect them from coin which has not that character. The laws for the protection of coinage are in every country very severe. In India they are equally so, but, as already explained, they do not, as matters stand, reach coiners of the kind to which I have been alluding. It is one thing to permit a people who are in a comparatively early stage as respects the development of commerce and trade to continue to pass from hand to hand the imperfect copper coin which has come down to them from before British times; but it is quite a different thing to allow people to set up within our own territory a manufacture for the purpose of perpetuating these imperfect coin, and not only to compete with the State in the exercise of a function which, in India especially, represents the sovereign power, but to appropriate a profit which properly belongs to the State generally.

"The facts which I have stated show that the same reasons which have led to the attachment in all countries of severe penalties to the unauthorized fabrication of coin compel us in India to penalize equally the fabrication of copper dumps intended to be used as coin.

"The opportunity of this Bill has been taken to improve the law relating to coinage in another point which the Government for some time has had in contemplation. In December, 1885, a man of the name of Jala Vijanand was found in Bombay engaged in manufacturing certain current Turkish coins which go by the name of ghazis. Complaints had for some time been made on the part of the Turkish Government that these coins had been imported into Turkey from Bombay, and there can be little doubt that this manufacture was connected with these complaints. Upon the trial which took place before the High Court in Bombay the whole of the facts were admitted, but the man pleaded that he manufactured the coins not for use in circulation but for use as ornaments. The fact that he was a working goldsmith by trade gave colour to this plea, and at all events he was pronounced not guilty.

"The law, as it stands at present, attaches a penalty to the counterfeiting of coin, but it defines this counterfeiting in this way. 'A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception or knowing it to be likely that deception will thereby be practised.' It is consequently incumbent on a Judge,

trying a case like this in India, to leave to the jury the question whether it is sufficiently proved that the person charged with counterfeiting coin intended to practise deception, or knew it to be likely that deception would be practised. Under the law, however, as it stands in England the Judge would have instructed the jury that the facts, admitted by the defendant in this case, of themselves constituted an offence punishable with seven years' imprisonment. Suppose the circumstances had been reversed; suppose, for example, we had been receiving importations of rupees from Turkey; that some person in Turkey had been arrested in the open practice of the fabrication of these rupees, that he had been taken before a Turkish Court, and had there pleaded that he did not make the coin for circulation, but only for the purposes of ornament; and suppose the Turkish Court had been obliged to acquit him; one could easily imagine that we would have said many evil things of the insufficiency of the Turkish law or the incompetency of the Turkish Courts. It is obvious that the Turkish Government have the same cause of complaint against us as we under the circumstances stated would have against them; and, now that the defect in our law has been pointed out, we ought not to place ourselves a second time in the position of having to give the Turkish authorities such an unsatisfactory answer as on that occasion we were obliged to give. We propose, therefore, to adopt in this respect the law already current in England and in Canada and to make the mere making of a similitude of any actually current coin a punishable offence."

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also introduced the Bill. He said :—

"As regards the first intention of the Bill, that relating to copper dumps, the third section is the principal one. It prohibits the making of pieces of metal intended or likely to be used as money, and attaches a penalty of three years', or on a second conviction seven years', imprisonment to the offence.

"The main difficulty in drawing the Bill has been to frame it so that no penalty should attach to the mere passing of dumps received in actual circulation. At the same time we cannot place ourselves in this position that, when a man is arraigned for manufacture, he should be able to escape by pleading that he only stayed outside and passed the coins into circulation while his brother manufactured them inside. We must attach a penalty to issue, but we carefully guard it in several ways. First, we define issue, not as passing on in circulation, but as initiating the circulation. We make 'issue' an offence not cognizable

by the police, and require the authority of a District Magistrate before cognizance is taken of it.

"If we prohibit manufacture in India, we must also prohibit systematic importation, in merchantable quantities, of dumps manufactured (say) in Nepal or elsewhere. The ordinary law enables us to do this, but the fourth section of the present Bill provides a penalty similar to that for manufacture in India.

"It need not be said that any prohibition issued as here proposed will be carefully so worded as not to extend to persons who merely cross a frontier with a few dumpy pice in their pocket belonging to the circulation of the State from which they come.

"We deem it necessary to provide by the law that dumpy pice shall not be received by railway companies or municipalities. So far as the Executive Government is concerned, we do not receive dumpy pice in any Government establishment. Though we do not interfere with their circulation, it is our deliberate purpose to discourage them, and to draw a line of distinction between authorized pice of Government issue and dumps; and we do not think it right that public bodies, like municipalities, which are constituted by our law should be permitted to treat as lawful coin of the realm a coin which has no authority from Government, and is in many cases the produce of what we now stigmatize as a severely punishable offence.

"The last section deals with the question of the Turkish coins, and its wording is based upon that of the English law. It will be for the Select Committee to whom this Bill will be referred to consider the question whether the necessity for this section might not be avoided by a revision of the definition of 'counterfeiting' as it exists in the Penal Code. There are two points which have to be considered in matters relating to coinage. The first is the prevention of fraud, and the second the maintenance of a certain fixed standard of purity and genuineness. Now, as the law at present stands, there is nothing to prevent any one undertaking the manufacture of coin so long as the intention to defraud cannot be proved against him. That is to say, although we carefully provide a huge establishment at the cost of the State for the manufacture and maintenance of our current coin, and carefully provide precise and exact limits regarding the regulation and manufacture of coin on the part of the Government, we do not protect the monopoly of manufacture by subjecting to penalty any person who on his own account manufactures coin if it is meant to be good. It is true that

private persons are not likely to undertake a business of the kind, as it is pretty certain to end in loss; but at the same time the privilege of coinage is a prerogative of the Sovereign Power, and the value of a rupee rests upon the assurance which people have that it has issued from our Mints, and from no other place. As I have mentioned, the law of England attaches a penalty to the making of coin quite irrespective of any question of fraud, and we might do well to follow the example of English law in applying penal legislation to protect the purity and genuineness of our coin, as well as to guard against the fraud ordinarily implied in counterfeiting."

The Hon'ble MR. WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

INVENTIONS AND DESIGNS BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Protection of Inventions and Designs. He said:—

"Many communications have been received by the Committee or published in the Press regarding this Bill. We have endeavoured to give them all our attentive consideration, and I will now briefly state the alterations which we have thought it desirable to introduce. These alterations relate mainly to matters of detail, for we have determined to adhere to the main principle of the Act of 1859 as originally framed by Sir Barnes Peacock, under which the exclusive privilege springs into existence by operation of law and is not conferred by grant from the Crown.

"The first requisite of a patent, we have been told, is that it should be cheap. Inventors are often poor men, and are prevented from reaping the fruit of their ingenuity by the cost of obtaining protection. We have fixed a scale of fees in Schedule IV suited to the poorest purse. The term of a patent being maintained at fourteen years, we propose that the initial payments of ten rupees on filing the application and thirty rupees on filing the specification—forty rupees in all—shall secure the exclusive privilege for four years, a period sufficient in ordinary cases to determine whether the patent is worth maintaining or not. If it is, the inventor can retain it by annual payments of fifty rupees for the

next five years and one hundred rupees for the last five years of the time. If he obtains an extension of the time, he will have to pay one hundred rupees annually. By omitting to make the payment he may abandon the exclusive privilege at any time, and his invention, *valeat quantum*, becomes available for the benefit of the public. In this way the inventor is made the judge whether it is worth his while to maintain his patent or not; and the fees are graduated so as to correspond approximately with the increasing value which the invention may be supposed to acquire as it becomes more generally known and used. By this procedure also patents for inventions of small value are speedily eliminated and cease to stand in the way of more valuable combinations.

"In the next place, as the consideration for every patent is the communication of useful information to the public, we have provided, in section 9, that the specification must describe the invention in such full, clear and exact terms that any person skilled in the art, process or manufacture to which the invention relates shall be able to make and use it without difficulty. This is the American rule, and is supported by a long series of decisions in the English Courts. To secure this complete description we provide that drawings or photographs must be supplied when necessary; and, objection having been taken to the expense of models, we propose that these shall be furnished only when especially required by Government. To ensure proper publication of the invention in India, we think that specifications should be filed not only in Calcutta, Madras and Bombay, but also in Rangoon, and such other places as the Governor General in Council may from time to time appoint.

"As litigation in regard to patents is frequently of the most vexatious and expensive character, we have provided that, when a plaintiff impeaches the validity of a patent under section 30, he may be required by the Court to give security for costs, and that the Court may add, as parties to the suit, any persons claiming an interest in the subject-matter. In this way, it is hoped, multiplicity of actions may be avoided and frivolous applications discouraged. In like manner, we propose that, when application is made for the prolongation of the term of a patent beyond fourteen years, the Court may hear what is to be urged for or against the extension by any person interested in obtaining or opposing it. As there would be a manifest inconvenience in maintaining in India a patent which had expired in the United Kingdom or any foreign country, we have provided that when from any cause a patent ceases to exist in its country of origin it shall also come to an end in this country.

"With a view to encourage foreign inventors, we have provided that any act required to be done in regard to the obtaining of an exclusive privilege in

India by an inventor may be done on his behalf by an agent duly authorised in writing; and, as it may be difficult for an inventor to protect his rights in a country of such extent as this, we have provided that he may assign them in any province or other local area as he may see fit. We have not thought it wise to adopt a suggestion that has been made that Government should maintain a special police for the purpose of discovering and punishing infringement of patents. The patentee must guard his own privilege: the duty of the legislature and of the Government is at an end when he is provided with reasonable facilities for doing so.

"In the part relating to designs we have made a few amendments of a subsidiary character.

"Surprise has been expressed in some quarters that this Bill does not, like its English prototype, deal with trademarks as well as with inventions and designs. Upon this point it may be sufficient to say that a Bill for the registration of trademarks was prepared in 1879 at the suggestion of the Bombay Mill-owners Association and the Bombay Chamber of Commerce, and abandoned in 1881 at the almost unanimous request of the mercantile community throughout the country, including the two Associations above-named."

DEBTORS BILL.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Mr. Halliday be added to the Select Committee on the Bill to amend the law relating to Imprisonment for Debt.

The Motion was put and agreed to.

RESERVE FORCES BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved for leave to introduce a Bill to regulate Her Majesty's Indian Reserve Forces. He said:—

"The object of the Bill is stated in the title, but I may just mention for the information of the Council that in 1885, when the Government were engaged in various measures for improving the efficiency of the Indian Army, they determined, with the approval of Her Majesty's Government, to introduce into that army the system, which has been established some years with great success in the British Army, of what is known as the reserve system, under which soldiers are returned to private life on reduced rates of pay with the liability to be called upon to join their regiments in cases of emergency. It is considered

that a system of this kind, which is unquestionably not only efficient but economical, is peculiarly adapted to the circumstances of the Indian Army, because that army is composed in a great measure of people drawn from the agricultural population, who ordinarily live in their villages, ready to be found, and to whom it is thought such a system would be peculiarly acceptable. I may mention that although the Indian Army is technically a long service army, insomuch that every soldier is eligible for pension if he serves for a pensionary period, and is entitled to remain in the service until he has become eligible for pension, nevertheless, as a matter of fact, it is a short service army, so far that a great many of the soldiers take their discharge within from five to ten years' service. The reason for this state of things is generally supposed to be that these men, being agriculturists and having an interest in their lands, cannot conveniently absent themselves from their homes for long periods of service. But, although long service is not practicable for many of them, they are a class of men who are military in their instincts and are quite ready to come for shorter periods; and it is hoped and believed that the attraction of a reserved rate of pay, carrying with it only the liability to be called upon for active service on emergency, as I have mentioned, will be acceptable to a large number of those men who now take their final discharge after short periods of service in the Army. I should mention that, although the reserve system was nominally introduced by notification about a year ago, practically not much progress has been made with it up to this time, in consequence, first, of a large part of the army being engaged in active service in Burma, and also because the Bengal Army has been undergoing a small augmentation, and until that is completed it is not possible to allow men to be drafted into the reserve. It was originally contemplated that the reserved soldier would be on the footing of a man on unlimited furlough, and that his legal status should not be affected by his going into the reserve on this condition. But on further consideration it was found desirable, following the practice in England, where a special Reserve Act has been passed, to deal with soldiers in the reserve also of the Indian Army in this country by a legislative enactment setting forth the conditions of service in the army reserve."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also introduced the Bill.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in

English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 24th February, 1888.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 23rd February, 1888.

Government of India Central Printing Office.—No. 470 L D.—23-2-88.—308.—J. W. DeB.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 24th February, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland.

The Hon'ble Rana Sir Shankar Bakhsh Singh Bahádur, K.C.I.E.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.

The Hon'ble W. S. Whiteside.

The Hon'ble J. W. Quinton, C.S.I.

The Hon'ble R. Steel.

The Hon'ble Sir Dinshaw Manockjee Petit, Kt.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

DEBTORS BILL.

The Hon'ble Mr. SCOBLE presented the Report of the Select Committee on the Bill to amend the law relating to Imprisonment for Debt. He said:—

"As the Bill has been reported in a form substantially differing from that in which it was introduced, I feel it my duty to explain, as briefly as may be, the alterations which have been made and the reasons which prompted them.

"The origin of this measure is thus described in the Statement of Objects and Reasons published by my hon'ble friend Mr. Ilbert on the 9th June, 1886:—

'On the 17th November, 1881, a circular was addressed by the Government of India to all Local Governments and Administrations, stating that the Government of India had under consideration the question of amending the provisions of the Code of Civil Proce-

dure bearing upon the question of the arrest of *pardânashin* women in execution of the decrees of Civil Courts, but that before coming to any final conclusion on the subject the Governor General in Council thought it desirable to deal with the larger question of abolishing imprisonment for debt, and for this purpose to enquire whether sufficient reasons exist for the continued maintenance in India of the present system. Local Governments and Administrations were accordingly requested to favour the Government of India with a full expression of their opinion on the matter.

'The replies to the circular disclosed much difference of opinion as regards the advisability of maintaining in India the present system of imprisonment for debt.

'In favour of the maintenance under existing circumstances of the present system of imprisonment for debt were the Madras Government, the Madras High Court, the Bombay Government, the Bombay High Court, the Calcutta High Court, the Calcutta Chamber of Commerce and the Trades Association, Calcutta (unless a change were accompanied by the enactment of a stringent bankruptcy law), the British Indian Association, Calcutta, the Board of Revenue, North-Western Provinces, the Punjab Chief Court, the Chief Commissioner of the Central Provinces, the Chief Commissioner of Assam (provided the law were so altered as to permit the issue of process against the person only after all means of realising the decree by process against property have been exhausted) and the Chief Commissioner and the Judicial Commissioner of Coorg.'

"On the other side were arrayed the Advocate General of Bengal, the Bengal Government, the Government and High Court of the North-Western Provinces, the Punjab Government, the Chief Commissioner of British Burma, the Judicial Commissioner of the same Province, the Recorder of Rangoon and the Resident at Hyderabad. Thus the preponderance of opinion was on the whole in favour of the maintenance of imprisonment for debt under the present condition of India, but a considerable and influential minority were in favour of its abolition.

"In the result, my learned friend, adopting the opinion that imprisonment for debt ought to be abolished, proposed that, 'having regard to the authority and experience of some of those who are opposed to a change in the law, and bearing in mind the immense diversity of circumstances and conditions which prevails throughout this vast peninsula,' the most prudent course would be to confine its application in the first instance to one province, the North-Western Provinces and Oudh, where the balance of authority, administrative and judicial, was in its favour, leaving it to the Local Governments, with the previous sanction of the Governor General in Council, to apply it to other provinces as they might see fit.

"The Select Committee have not been able to accept this view. They are of opinion that there should be uniformity of practice in regard to execution of decrees wherever the Code of Civil Procedure applies, and that it is the part of the Legislature, and not of Local Governments, to determine whether any, and what, changes should be made in that procedure. Bearing in mind Lord Macaulay's celebrated aphorism—'Uniformity when you can have it; diversity when you must have it; but in all cases certainty,' they have carefully examined the voluminous papers submitted to them with a view to ascertain whether any alteration of the law was called for, and whether men's minds were generally agreed as to the particular alteration necessary.

"Let me here quote Mr. Ilbert's summary of the present state of the law:—

'The present state of the law is this. Under the Civil Procedure Code a decree or order for the payment of money may be enforced by the imprisonment of the judgment-debtor. The Court has a discretionary power to refuse execution at the same time against both person and property, but has no discretionary power to refuse execution either against person or against property at the option of the creditor. When an application for execution of a decree is presented, it must, if it is not barred by efflux of time and is otherwise in order, be admitted, and then the Court must order execution of the decree *according to the nature of the application*. The Court cannot refuse to issue its warrant for the execution of the decree unless it sees cause to the contrary, and "cause to the contrary," as interpreted by the Courts, means some cause which deprives the decree-holder of the right to execute, or to execute against the party against whom execution is sought, or to execute in the mode prayed for.

'Thus, therefore, it may be clear that the debtor has property available for attachment, and that a warrant of arrest has been applied for from vindictive or other improper motives, and yet, if the creditor asks for a warrant of arrest, a warrant must issue. The debtor may be a woman, she may even belong to the class of women who by the law of this country are exempted from public appearance in Court, and yet, if the creditor says that he wishes to send her to prison, to prison she must go.'

"It appeared to the Committee that a state of the law under which the discretion as to whether a debtor shall be arrested and imprisoned or not rests not with the Court but with the creditor was wrong and ought not to be maintained. It has been well said that—'to arrest without enquiry is to punish the larger number of debtors because the smaller require to be coerced;' and it is easy to see how such a power is likely to be misused. The Committee accordingly examined the opinions before them with a view to ascertain whether such a modification of the law as would vest the discretion in the Court was generally desired.

"It would be wearisome to go through all the opinions received, but I will venture to quote a few of them. The Bengal Government wrote :—

'Honest debtors would have a sufficient protection if the Code of Civil Procedure were amended so as to give the Court the discretion of refusing applications to execute process against the person.'

"The Bengal Chamber of Commerce 'would like to see imprisonment, in default of satisfying a decree of the Civil Courts for money, fenced round so as to exclude its being used for malicious motives out of spite, or to satisfy feelings of hatred or revenge.' How this might best be done they say is a problem for those to solve who have proposed the new change in the law. But they suggest that the Judge, after hearing the statements on both sides, might decide whether it is or is not a case where imprisonment for debt might properly be resorted to.

"In the opinion of the Bombay Government,—

'The Courts should have the power to distinguish between the two classes of debtors, and to send to jail those who will not pay, or who, not having the means of paying immediately, refuse to enter into such terms as the Court considers fair and reasonable.

'His Excellency in Council would prefer a provision that upon an application for the arrest of any debtor the Court should cause the defendant to be brought before it, and should satisfy itself that he has not the means of discharging the debt either immediately, or in such manner and within such time as the Court may consider reasonable. If the defendant fails to satisfy the Court, the warrant for arrest should issue.

'The Court would generally be able to satisfy itself by examining the parties and any witnesses whom they might produce, both as to the present means of the defendant and his prospect of future earnings; and, in the event of immediate payment being impossible, it might in most cases substitute for the extortionate bond required by the creditor an order for payment by instalments (including reasonable interest) under section 210 of the Civil Procedure Code. The whole amount of the debt should be made payable immediately, on default of payment of any instalment, and in that event a warrant of arrest should be granted without further inquiry.'

"Mr. Justice West writes :—

'Looking to all the circumstances, a discretionary power should, I think, be given to the Civil Courts as to the issue of a warrant of arrest before the failure of other means of enforcing a decree, and there the legislature should, for the present, be content to stop.'

"The Advocate General of Bombay says:—

'No doubt there are cases in which the power of imprisonment for debt is abused by the creditor, as may be said of all legal process; but I think that these cases would be fully provided for by an amendment of the Civil Procedure Code giving the Court power to refuse an order for arrest of a judgment-debtor or to make an order for his release after arrest in such cases as are provided by section 30 of the Presidency Small Cause Courts Act, 1882; and I think that such an amendment ought to be made.'

"Mr. Justice Brandt, of the Madras High Court, says, and Mr. Justice Parker concurs with him:—

'I should be in favour of an amendment of the provisions of the Code of Civil Procedure in this respect to the extent of vesting the Court executing the decree with full discretion as to whether it would allow process to issue for the arrest of the person of the judgment-debtor, before and until process against property has been issued and proved infructuous.'

"Acting upon the opinions thus expressed, the Select Committee have, in sections 2 and 4 of the Bill, provided that, when an application is made for the execution of a decree for money by arrest and imprisonment, the Court may issue, instead of a warrant, a notice calling on the debtor to show cause why he should not be committed to jail. If the debtor appears upon this notice and satisfies the Court that he is unable, from poverty or other sufficient cause, to satisfy the decree, the Court may release him; if he fails to appear or to satisfy the Court of his inability to pay, the Court may arrest and imprison him. As a guide to the discretion of the Court we have adopted the main provisions of the original Bill as to the circumstances a consideration of which may influence the Court in determining whether or not to exercise the power of imprisonment against a debtor. This is a point on which great differences of opinion may and do prevail, but, having regard to the fact that a man may be guilty of many of the malpractices mentioned without bringing himself within the clutches of the criminal law, the Committee has decided to maintain these provisions.

"It may be thought that this is but a slight alteration of the existing law, that under section 336 of the Code as it stands a debtor has only to inform the Court that he intends to apply to be declared an insolvent, and that upon declaring his intention so to apply within a month, and giving security that he will appear when called upon, the Court shall release him. But the alteration is important. Under the existing law the debtor comes before the Court in custody; under the proposed Act he may

come as a free man. It is obvious that he will be in a far better position to prepare a statement of his affairs and to ask his friends to become security for him if he is at liberty than if he is exposed to the indignity and inconvenience of arrest and consequent imprisonment. This consideration applies of course to the honest debtor, whom alone we are concerned to protect: and it is surely fair that his poverty should not be made the occasion of aggravating his misfortune. On the other hand, it is only fair to give the creditor every reasonable facility for obtaining the property of his debtor; and experience seems to establish that in India at all events the remedy is not complete without the power of imprisonment in proper cases.

"One class of judgment-debtors, however, the Committee propose absolutely to exempt from liability to arrest and imprisonment for debt, and that is—women. This is in accordance with the views of the British Indian Association as to *pardánashin* ladies expressed in a letter to the Government of Bengal under date the 28th of June, 1882. 'The law,' they say, 'ought to be adapted to the peculiar circumstances of the country. The Committee submit that the Indian feeling regarding the sanctity of the zanána is not a mere sentiment: it is bound up with the deeply cherished religious feelings and social usages of the people.' The proposal in the Bill is to render a woman's property alone answerable for debts incurred by her: we thus assimilate the position of all women to that enjoyed by some married women under Act III of 1874. That there is abundant ground for making this exemption general is clear from the papers which have been before the Committee. Although it may not be true, as stated by one officer, that 'it is almost invariably the female who is selected for imprisonment,' there is no doubt that a system under which, from want of better accommodation, respectable though poor women may be lodged in a criminal jail with thieves and prostitutes for their companions, is self-condemned. The only difficulty in the way of total exemption of women arises from the fact that a woman may, of her own motion or at the instigation of designing persons, institute a false and vexatious suit against an innocent defendant and go harmless if the suit is dismissed and costs are decreed against her. To guard against this we have provided in section 5 that, when a woman is sole plaintiff, the Court may, on proper grounds shown, require her to give security for costs.

"Section 9 of the Bill provides for the cancellation by the Court of an order for arrest or imprisonment in case of the serious illness or confirmed bad health of the debtor, and by the Local Government if he is suffering from any infec-

tious or contagious disease: but a debtor released under these circumstances is liable to be re-arrested.

"The Select Committee has not adopted that portion of the original Bill which cast the burden of maintaining a debtor while in jail upon the State. Imprisonment being used as a means of compelling payment, it seems just that the creditor, who asks the State to assist him in obtaining payment by this means, should pay the expenses of the process. By retaining this obligation of the creditor to support his debtor while in jail, a debtor is not likely to be kept in jail longer than is necessary to convince the creditor that the debtor has no means of satisfying the debt.

"As originally drafted the Bill related to decrees or orders of Revenue Courts. The general consensus of opinion on the part of the officers and Administrations consulted was that the collection of revenue should not be made subject to the provisions of the Bill, and its operation as regards rent and revenue will extend only to decrees passed in rent-suits by Civil Courts or Courts regulated by the Code of Civil Procedure and to the collection of revenue under the rules of the Code, as in Bengal and Burma. With a view to assimilate the maximum time of imprisonment for rent-defaulters to that fixed for other civil debtors throughout India, we have recommended certain subsidiary amendments in Madras Act VIII of 1865 and the North-Western Provinces Rent Act, 1881.

"It only remains for me to thank the Council for the patience with which they have listened to these observations. But the Bill is one of great importance; and having regard to the alterations which have been introduced, I ask the Council to direct its re-publication. The effect of the Bill will now be to prevent the imprisonment of debtors who are paupers but not fraudulent; and to leave creditors the power of imprisoning debtors when a Court has been satisfied that such process may justly be resorted to."

The Hon'ble SIR CHARLES ELLIOTT said—

"I was not a member of the Select Committee appointed to examine this Bill, but, as the subject is one in which I have always taken the greatest interest, I think it right to venture to offer a few remarks on the subject for the consideration of the Council. When the proposal to abolish imprisonment for debt altogether was circulated for the opinion of Local Governments, I was not able, as the Hon'ble the Law Member has just stated, to support the proposal in its entirety, feeling that in the present condition of things the temptation which it

would place in the way of debtors to fraudulently remove the whole of their property, or to transfer it to others, or to cause it to disappear, would be very great. But I pointed out the extremely unsatisfactory position in which the Civil Courts are placed from the fact that no discretion is allowed to the Courts in the case of judgment-creditors applying for the execution of decrees either against the property or the person of a debtor, and I urged that the law should be modified to the extent of allowing that discretion. I venture to think that the line which has been taken by the present Bill has very happily hit the proper medium between the more advanced proposal which was originally circulated and the provisions in the existing law which have been worked in a very objectionable way. But, though on the main point the Bill has been a very great improvement, I think there are certain other objectionable points in the Code of Civil Procedure which, if it had been in my power, I should wish to have seen changed along with this Bill, but which I have not had an opportunity of bringing before the Select Committee from the fact of my not being here at the time when this Bill was being considered. I think on that account I may venture to lay before the Council now the points which should, in my humble opinion, be taken into consideration whenever an opportunity occurs of amending the Code of Civil Procedure.

"The first point is with regard to section 342 of the Code of Civil Procedure. Under that section, if the decree is for a sum less than Rs. 50, a person can be imprisoned for six weeks; and, if it is for Rs. 50 or over, he can be imprisoned for six months. But I do not find it distinctly laid down what the exact sum is which is referred to as making up the Rs. 50; whether it is the decree for the original debt, or whether it is the decree plus the interest on the debt up to date and the costs which have been incurred since. Under section 235 the creditor when applying for execution has to state the amount of debt due on the decree, and the interest, and the costs; and it is not clear whether section 342 intends that the whole of these three items should be considered to make up the Rs. 50 or not. The North-Western Provinces Rent Act, as mentioned in the concluding section of this Bill, expressly excludes costs and makes the term of imprisonment depend on whether the amount decreed, exclusive of costs, does or does not exceed Rs. 50. But I am given to understand that in most cases the Courts interpret this phrase to mean the original debt or the part of it remaining unpaid plus the interest and costs. Now, clearly the case may often happen—and I have practically found that it does happen—in which a decree may have been obtained for Rs. 45 and the addition of interest and costs in the case brings it to something over Rs. 50.

So that the question whether the imprisonment should be for six weeks or six months depends entirely upon whether in such cases the costs are included in the decree or not. I venture to think it would be well if the Code were so amended as to lay down a uniform procedure on this point.

"The second point I wish to bring forward is with regard to the interpretation of the wording of the same section. The section runs as follows:—

'No person shall be imprisoned in execution of a decree for a longer period than six months, or for a longer period than six weeks if the decree be for the payment of a sum not exceeding fifty rupees.'

"But some doubt exists as to whether the term should be the whole of six weeks or of six months, as the case may be, or whether in either case it may be a somewhat shorter period—whether the section is meant to be rigid or elastic. I believe the majority of the Courts interpret this section in the sense that it must be rigid, that is to say, when the law says that no person shall be imprisoned for a longer period than six months when the decree is for a sum exceeding Rs. 50, they hold that it means that every such person shall be imprisoned for a period of six months. That seems to me to be a perversion of the meaning of the words. During the course of my inspection of the Civil Courts in Assam I have found that in some cases Munsifs have taken one view, and in other cases they have taken the other. And it seems to me to be exceedingly desirable that the Courts should have power to say, 'Here is a debt of a little over Rs. 50 (say, Rs. 100); I will give the debtor two or three months' imprisonment for it, and not the full term of six months which the law provides.' If there is any opportunity, I think it will be well for the Code to be amended either to carry out the meaning I attribute to the section, or at any rate to make its meaning perfectly clear.

"The third point is with regard to the subsistence-allowance. The hon'ble mover has just informed us that a proposal has been made to the Committee that the cost of the maintenance of civil prisoners should be borne by the State. I am extremely glad to hear that the proposal has been rejected; for it seems to me to be a perfectly axiomatic principle that, if our jails and our jail-establishments are to be used as bailiffs by moneylenders for the purpose of collecting debts due to them, they should be compelled to pay the costs of such procedure. But the law does not say clearly that they should pay the whole costs of this procedure. There is no interpretation in the Act of the term 'subsistence', but I believe that, as

a matter of fact, it is generally taken to mean simply food. An inspection of the schedules prescribed by the different Local Governments, in which they provide a scale of payment for debtors of different classes, will show that in almost every case for the poorest classes of debtors two annas a day is prescribed, which may be roughly taken as the minimum amount upon which a man can be fed. The Prisons Act (Act XXVI of 1870), which is in force in Assam, provides by section 36 that the clothing and bedding which are required for a civil prisoner may be charged against the creditor. No one who has inspected a jail in bitter cold weather, as I have in Assam, and has seen the state in which the extremely poor classes of debtors are left, can fail to doubt that this is a reasonable and merciful provision. But I go further and say that the creditor should be made to pay not only the cost of food, clothing and bedding, but also a share of the expense which the State has to bear in the watch and ward of the prisoners and also of the building and maintenance of the places in which they are kept. I think it would be well on a future occasion if the law were so amended as to show that all this expenditure ought to be laid upon creditors and not upon the State.

"My fourth point arises when, having taken the prisoner through his term of imprisonment, we come to the conditions upon which he is to be released. The Code of Civil Procedure provides no form of warrant under which he is to be imprisoned. In the case of a criminal prisoner a specific form of warrant is laid down by law. And beyond that the Prisons Act provides that in the case of criminal prisoners jailors should keep a register of warrants, and a book shewing the names of prisoners and the date upon which each prisoner is to be released. In Bengal the Local Government provides for the same thing by its own circulars. So that in the case of criminal prisoners there is no possibility, except by direct fraud, by which a man can be kept in prison one single day beyond the term of his imprisonment. And it is our custom on inspecting jails to look specially at this register of the dates of release. It provides a page for each day of the year for many years ahead, and we there see the names of the prisoners who are to be released on each day, far ahead of the date of inspection; then we turn up the warrants and verify the register by the warrants. And in this way every inspecting officer who visits a jail sees that there is no possibility of the liberty of a prisoner being infringed for a day longer than his warrant provides. But it is strange that the law has taken no such tender care of civil prisoners. There is no provision which secures that a man shall be released at the time he ought to be let out. The form of warrant under which he is committed to prison is not

fixed by the law but is laid down by the High Courts. The North-Western Provinces High Court has provided a form of warrant in these terms:—

'You are hereby required to receive the said prisoner and to keep him in custody for the term of subject to the provisions of section 341 of the Code of Civil Procedure.'

"But the form of warrant issued by the Bengal High Court (unless it has been recently altered) does not contain any provision of this kind. It runs—

'You are required to receive and to keep him in prison until the said decree shall be fully satisfied, or until the prisoner shall be otherwise entitled to be released according to the terms of section 341 of the Civil Procedure Code.'

"That is to say, it leaves the date of the release of the prisoner to be decided by the jailor, according to his knowledge of law and his interpretation of the Act; and that, I submit, is a power which should not be left to a man who is in the somewhat inferior position in which the jailors of minor jails usually are. I think it is necessary when the law is revised that the form of warrant should be prescribed in the Code, and that a similar provision should be made for civil as for criminal prisoners with regard to keeping up a release-book and a registry of warrants.

"Then, the last point I wish to bring forward is with regard to cases of insolvency. It is quite true that, under the wise amendments of the Bill now before the Council, these provisions will become of very much less importance than they have hitherto been. Hitherto they have been the sole protection of the pauper debtor against the malice or the rage of his creditor; whereas now the discretion of the Court is interposed and the creditor will not be allowed by the Court to use the Government jails as a means of wreaking his anger upon the debtor who is honest but who is entirely unable to pay. Still the provision for insolvency, as far as it remains, should, I think, be modified in one respect, namely, that at present a prisoner who applies for insolvency has to furnish sufficient security that he will appear when called upon. Now, the pauper debtor can never furnish security. Over and over again, when I have visited jails, I have found extremely poor prisoners lying in them for extremely small sums (say, for Rs. 10 or Rs. 20). I have asked them why they did not apply to the Court for an order of insolvency, and the answer was generally that they knew nothing whatever about it, that provisions of the law had never been brought to their notice: and afterwards, when measures have been

taken to remedy this, the answer has been that the law requires them to find security for their appearance, and that they were quite unable to provide any security; therefore that very small provision has completely frustrated the intention of the law with regard to the very class of debtors for whom it was intended. I think their cases should be taken into consideration and some remedy devised to prevent the procedure from being so ineffectual.

"These are the points which my personal experience of the administration of a province has brought to my notice. It is unfortunate that I was unable to bring them before the Select Committee, owing to the fact of my not having been in India, but last week I took the first opportunity I had to speak to the hon'ble member in charge of the Bill, and he informed me that, if I brought forward these points as amendments, they would necessitate so considerable a change in the Bill that it would be necessary to refer it back to the Local Governments, and therefore a whole session would expire before the Bill could be passed. Admitting, as I do, that the Bill is an extremely valuable one, I completely accepted the force of his objection, and the only thing I can do now is to give what publicity I can to the points which I desire to see amended in the Code of Civil Procedure, because, as I understand, in a very short time the amendment of the Code will be taken in hand, and I trust that, having brought forward the points in this way, they will be considered by the Select Committee and the Council."

The Hon'ble LIEUTENANT-GENERAL CHESNEY gave notice that at the next Meeting he would move that the Army Reserve Bill be taken into consideration.

The Council adjourned to Friday, the 2nd March, 1888.

S. HARVEY JAMES,
Secy. to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 29th February, 1888.

Government of India Central Printing Office.—No. 490 L D.—2-3-88.—300.—N. T. W.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 2nd March, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble J. Westland.
The Hon'ble Rana Sir Shankar Bakhsh Singh Bahadur, K.C.I.E.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.
The Hon'ble W. S. Whiteside.
The Hon'ble J. W. Quinton, C.S.I.
The Hon'ble R. Steel.
The Hon'ble Sir Dinshaw Manockjee Petit, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

RESERVE FORCES BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved that the Bill to regulate Her Majesty's Indian Reserve Forces be taken into consideration. He said :—

" In introducing this Bill into Council a fortnight ago I explained that the object of it was, following the system in force in regard to the English army, to establish a simple procedure to provide for the conditions of service of the men about to be brought into the Indian reserve force under measures lately determined upon with the approval of Her Majesty's Government. In ordinary

course the Bill would have been referred to a Select Committee, and also to the different Local Governments and Administrations, who would have been invited to record their opinions on the Bill, and the Select Committee would not have proceeded to consider the Bill until those reports had been laid before it. Meanwhile, men passing into the reserve of the army under the conditions at present subsisting would, as a matter of equity, as soon as this Bill was passed, be given an opportunity of re-considering their position, and of electing or otherwise for the reserve under the new conditions. I mentioned to the Council in introducing the Bill that the army reserve measures had so far taken very little effect, partly because the army was engaged in active operations and consequently the men were not allowed to transfer themselves to the reserve, and also partly because the establishment of the infantry of the Indian army was not quite complete. But these causes which suspended the progress of this measure having now terminated, and there being reason to believe that much more active and considerable progress will shortly be made in the formation of the reserve, it is I think exceedingly desirable that all the men who draft into it should be subject at once to their final conditions, and that they should be spared the trouble of being called upon to join their regiments in order to have a new set of conditions explained to them and their assent or dissent obtained to them. That is the reason why it is very desirable that this measure should become law at once.

"The provisions of the Bill are of an extremely simple kind. It is very unlikely that reference to the Local Governments and Administrations would result in any substantial change or in any change even in the wording of the Bill; it may be observed also that the conditions established by it are of a more easy character as regards the soldier than those under which he is now serving in the reserve, inasmuch as that the penalties which the Bill provides in the event of a man failing to obey the summons when called upon to join his regiment are of a much easier and lighter nature than the penalties to which the man is now liable who, whilst on furlough, disobeys an order to join his regiment. So that it may be said that the soldier will gain rather than lose by the Bill becoming law.

"Under these circumstances I beg to ask that the Bill be now taken into consideration."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 10th March, 1888.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM,
The 5th March, 1888.

Government of India Central Printing Office No. 511 L. D.—6-3-88—308.—A. F. DeS

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Saturday, the 10th March, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland.

The Hon'ble Rana Sir Shankar Bakhsh Singh Bahadur, K.C.I.E.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.

The Hon'ble W. S. Whiteside.

The Hon'ble G. H. P. Evans.

The Hon'ble J. W. Quinton, C.S.I.

The Hon'ble R. Steel.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

CIVIL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877. He said:—

"Although this Bill is somewhat formidable in appearance, I do not think it will be found upon examination to contain much controversial matter. I am free to confess that I approached its consideration rather more than twelve months ago by no means with a light heart. The revision of the Code of Civil Procedure is not a matter to be readily undertaken by any one familiar with the working of the Courts and who knows from practical experience how easy it is to pick holes and how difficult it is to mend them. No one could be more averse than I am to what is called 'tinkering' enactments of this kind. But

being confronted with an amending Bill on my arrival in this country, and overwhelmed with suggestions for still further amendments, I have had to deal with the matter, however reluctantly; and, with the assistance of the Select Committee, I hope to have produced a practically useful measure.

"As the Council are aware, the last edition of the Code was published in 1882. The six years which have since elapsed have brought to light some defects in its method, and some difficulties in its construction, which it is the object of the present Bill to remedy. The defects have been pointed out by the Courts which have had to administer the Code; the difficulties have resulted from imperfections of expression which have led different High Courts to construe the same sections in different ways. In dealing with this Bill the Select Committee has attempted no startling innovations, but has limited itself to the more modest, and, I think, more useful, task of making plain that which was before obscure, and supplying that which experience has shown to have been accidentally omitted or imperfectly expressed.

"At the risk of being somewhat tedious—for details of this kind, though important, are not interesting to a lay audience—I must ask the Council to bear with me while I point out the principal alterations effected in the Code by this Bill. Taking the sections in their order, the first to which I desire to call attention is section 3, which has been introduced on the suggestion of the Government of the North-Western Provinces and Oudh. The object is to preserve the summary character of rent-litigation under local laws; and it is justified on the ground that holding the provisions of the Civil Procedure Code to be applicable to the proceedings of the Rent and Revenue Courts, in all points which are not provided for in the special Acts governing those classes of Courts, may be the source of considerable embarrassment to the Administration, both by throwing impediments in the way of the easy realization of the rents from which the land-revenue is paid, and imposing increased labour on the Rent Courts whose time is already fully occupied.

"Section 5 relates to suits on foreign judgments. Upon this point there is a conflict of decisions between the High Courts of Madras and Bombay, which we have settled by declaring that Courts in British India shall not be precluded from enquiring into the merits of the case in which the judgment was passed by any Court in Asia or Africa, excepting only Courts established by the authority of the British Government in our colonies and dependencies. This will avoid the anomaly of placing the Courts of Siam or Cabul on the same footing as the Queen's Courts in Ceylon or Hongkong.

"Section 6 is intended to avoid a difficulty as to jurisdiction which frequently arises where the boundaries of estates or holdings are destroyed or altered by fluvial action.

"Section 7 is based upon a suggestion of Mr. Justice Straight, and makes it clear that, in order to found jurisdiction it is enough that a material part of the cause of action arises within the local limitsof the jurisdiction of the Court in which the suit is instituted.

"The object of section 9 is to give to the Courts greater power of amendment of plaints than they at present possess. The tendency of the Courts in England is to allow the greatest latitude in this direction. In a recent case before the Court of Appeal (*Weldon* v. *Neal,* 19 Q. B. D. 395) Lord Justice Lopes says: 'However negligent or careless the first omission, and however late the proposed amendment, the amendment should be allowed if it can be allowed without injustice to the other side.' In this country, where, as the Advocate General of Bengal observes, 'there is every likelihood of a poor suitor acting in ignorance or under the advice of ignorant advisers, and launching an honest case in a clumsy and irrational manner,' it appeared to the Select Committee there was abundant reason for adopting the English rule. The only necessary limitation is to prevent a suit of one character from being turned by amendment into a suit of a different character; and it is therefore provided that amendments which would have this effect are not to be allowed.

"Sections 10, 11, 12, 15 and 16 are intended to facilitate the service of summonses by an agency other than that of the Courts which issued them.

"Section 14 substitutes for sections 141 and 142 of the Code a simpler method of dealing with the documentary evidence produced in suits.

"Section 17 empowers the Local Governments to authorize selected Judges to take down the evidence in appealable cases in the English language. This section is regarded by the Bengal Government as 'perhaps the most important in the Bill,' and the Lieutenant-Governor believes that 'a cautious use of the power therein conferred will effect an enormous saving of time both in original as well as in appellate Courts.' District Judges are of the same opinion. Mr. Stevens, of Gya, writes—'It is scarcely possible to exaggerate the trouble, annoyance and waste of time which are frequently caused by the present mode of recording evidence;' and Mr. Towers, of Midnapore, says—'I believe the change would

be a very salutary one in all District Courts, and probably in those of most Subordinate Judges, which are always situated at head-quarters, and the pleaders practising in which are good English scholars. For myself I believe I could do twice the amount of appellate work if I had a record of the evidence in English. In original cases also it will save District Judges much time and trouble to have but one record. The expense of translations in the High Court will also be much reduced, and there will be a very appreciable gain to litigants.' From Madras, Mr. Justice Parker writes—'These provisions have long been most desirable in the Madras Presidency. The present practice is as much disliked by the Bar as by the Judge, and causes great loss of time.' The Bombay Government, on the other hand, consider the alteration undesirable; and there would be much force in their observation that "Judges are of necessity frequently sent to districts with the language of which they are unacquainted, and in such cases it is not desirable that there should be no vernacular record of the evidence" if the proposal were absolute; but, as Local Governments may limit and revoke the exercise of the power as they please, it may surely be expected of them not to misuse the discretion with which they are invested.

"Sections 18 and 19 make it clear that the law does not require the re-hearing of a suit by the successor of a Judge who, having part heard the suit, has been prevented by death, transfer or other cause from concluding the trial; but that the hearing may be taken up at the stage at which it was left by the previous Judge, with liberty to recall and re-examine any witnesses from whom further evidence may be desired.

"In section 20 we carry out a suggestion of the Chief Court of the Punjab with regard to the award of interest on decrees for money.

"Section 21 is designed to bring equitable set-offs, which the Courts are in the habit of allowing, within the operation of section 216 of the Code.

"In section 26 we have empowered the Court executing a decree to determine questions as to stay of execution: and, as considerable difficulties have been felt with regard to the meaning of the word 'representatives' in section 244 of the Code, we have provided a procedure by which, in case of dispute, the representative of a party for the purposes of the section may be ascertained.

"There have been so many conflicting rulings of the High Courts upon the effect to be given to payments or adjustments of decrees which have not been certified to the Court charged with the execution of those decrees, that we have

provided in section 27 that, unless such payment or adjustment has been certified as required by the Code, it shall not be recognized as a satisfaction of the decree by any Court executing the decree. This provision will, it is hoped, have the effect of inducing parties who settle out of Court to report to the Court that such settlement has been made.

"Section 28 brings the provisions of the Code in regard to the attachment of property in execution of a decree into accordance with recent legislation, and removes a doubt as to the extent to which the salaries of certain classes of public servants are liable to be attached.

"Under section 320 of the Code, Local Governments were empowered to direct that the execution of decrees affecting immoveable property might be transferred, in certain cases, from the Court to the Collector; and subsequent sections provided that the Collector might sell, let or mortgage the property as might seem most desirable under the circumstances. The Local Governments were authorized to make rules for the guidance of the Collector and his subordinates in executing the decree; but no provision was made as to the authority to which an appeal would lie from orders passed by the Collector in exercise of the powers conferred on him. The High Courts of Calcutta and Bombay have expressed the opinion that the proceedings of the Collector should be subject to appeal to the District Judge and the High Court; but there is a Full Bench decision of the Allahabad High Court, with which the Select Committee concurs, to the contrary effect. We think it was the intention of the Legislature that any appeal from the orders of the Collector in matters of this kind should go to the superior Revenue-authorities. There are obvious reasons of convenience in favour of this course, and we have so provided in section 30 of the Bill.

"The most important clause in section 31 is that which provides that Chapter XX of the Code, which relates to proceedings in insolvency, shall not apply within the towns of Calcutta, Madras and Bombay. This provision has been introduced at the suggestion of the High Court of Calcutta, the Judges of which point out the inconveniences of the present dual system, and say that 'it seems to be quite unnecessary to have two different systems of insolvency law at work in the same place. The provisions of the Insolvent Act, though in many respects imperfect, are now understood by practitioners, and great confusion and uncertainty has in some cases arisen from the introduction of a new and more imperfect procedure.' As the question of amending and consoli-

dating the law of bankruptcy and insolvency in British India is now before the Council, it seems desirable that the presidency-towns should, at all events for the present, retain the system to which they have for long years been accustomed. In regard to small insolvencies, moreover, I am in great hopes that they will be to a great extent got rid of when the Debtors Bill passes into law.

"The remaining sections of the Bill relate mainly to minor alterations. Sections 32, 53 and 66 extend the period during which the representatives of deceased suitors may apply to be entered on the record as plaintiffs or defendants. Section 33, restoring a provision of the Code of 1859, relaxes the stringency of the existing law respecting the dismissal of suits for default in giving security for costs. Section 34 enlarges the class of persons to whom commissions to examine witnesses may be issued, subject to such rules as the High Court may make in the matter. Sections 37, 38, 40 and 41 are to remove difficulties which at present beset ruling chiefs when they sue in our Courts.

"Section 44 is in accordance with the views of the Muhammadan Educational Endowment Committee, recently appointed by the Government of Bengal, and is intended to facilitate proceedings in suits relating to public charities. The Committee represent that it has been decided by a Divisional Bench of the Calcutta High Court (I. L. R. 8 Cal. 32) that the interest possessed in a mosque by those who live in the village in which it is situated, and are in the habit of worshipping in it, is not a direct interest within the meaning of section 539 of the Code. 'It would seem to follow that the real beneficiaries of a public trust, that is to say, those members of the general community who derive advantage from it in its ordinary operation, can seldom proceed under the section; while those whose interest in the foundation is more direct, as being entitled to share in its management, and who therefore can institute suits, are the very men who are likely to be guilty of malversation or other breach of the conditions of the trust. The Committee consider it most impolitic to deny the remedy to all except those who inflict the wrong, and would strike the word "direct" out of the section.' We have adopted this suggestion.

"Section 47 is intended to get rid of an anomaly which arises under the present state of the law in regard to the dismissal of appeals by default, and is proposed by Mr. R. J. Crosthwaite, the Judicial Commissioner of the Central Provinces, who writes as follows :—

'This amendment is necessary, because, as section 551 stands now, an appellant can, if his appeal is fixed for hearing under that section, refrain from appearing, and then

appeal from the decree of the first Appellate Court dismissing his appeal. The Court of second appeal will then have to consider the appeal and decide it, because the provisions of section 556 do not apply in the case of an appeal dealt with under section 551. When a first appeal is dismissed under section 556 for default, there is practically no second appeal, because the second Appellate Court must hold that, as the appellant did not appear in the Court of first appeal, that Court's decree dismissing the appeal was under section 556 correct; but when an appeal is fixed for hearing under section 551, and, the appellant not appearing, his appeal is dismissed, section 556 does not apply; and an appellant can thus ignore the Court of first appeal and take his appeal to the High Court. Section 556 does not, I think, apply, because there can be no doubt that the words 'on the day so fixed' mean 'the day fixed under section 552 for hearing the appeal.' This state of the law is anomalous, and, considering that a Court of second appeal is supposed to go by the findings of fact of the Court of first appeal, inconvenient. If an appellant does not appear on the day fixed for hearing, whether it be fixed under section 551 or section 552, his appeal should be dismissed, but he should have a right to apply for re-admission under section 558.'

"Upon the sections which follow from 48 to 59 I need not trouble the Council with any observations. But section 60 is of more importance. It embodies a suggestion made by the Judges of the High Court of Calcutta, who thus describe the difficulty which it is intended to cure :—

'In this province it is often difficult to tell whether a suit should be instituted in the Small Cause Court or a Court possessing ordinary civil jurisdiction. Numerous cases have been brought to the cognizance of this Court in which great inconvenience, hardship and injustice have been caused in this way. A suit is brought in the first instance in the Small Cause Court, and that Court declares that it has no jurisdiction and dismisses the suit. The plaintiff then institutes the same suit in the Munsif's Court, which, upon trial, gives him a decree. The defendant thereupon appeals to the higher Courts, and it is held that the Munsif had no jurisdiction, and accordingly the suit is dismissed. The result is that the unfortunate suitor gets no relief anywhere. And this same result also follows when the Court of first instance holds that it has no jurisdiction, and also when the suit is in the first instance instituted in the Civil Court and the suitor subsequently goes to the Small Cause Court. The Judges think questions of jurisdiction and errors as to jurisdiction should be susceptible of being dealt with and cured by the High Court by transfer, affirmation of decree or otherwise; and they think that the order of the High Court as to jurisdiction should be final.'

"I will not detain the Council by a detailed reference to the remaining sections of the Bill; but there is one important omission to which I desire briefly to advert. A recent decision of the Privy Council (*Rájá Amir Hasan Khan v. Sheo Buksh Sing*, L. R. I. A. 237) has given a more limited construction to section 622 of the Code than had been put upon it by the Courts in India;

and many suggestions have been made with a view to the extension of the revisional powers of the High Courts to all cases in which there had been a material irregularity in procedure or the decision was based on an erroneous view of the law. The Committee have not been able to adopt these suggestions, the more especially as they have been favoured with one by the Chief Justice of Bengal which would have the effect of doing away with second appeals altogether and substituting for them a right of application to the High Court as a Court of review in all cases in which it could be shown that a failure of justice had occurred. This suggestion, coming from so high an authority, deserves, and will receive, the most respectful consideration; but the proposal is of too sweeping a character to be hastily adopted, and the Committee did not think it desirable to delay their Report on this Bill for the purpose of consulting other authorities upon it.

"I have only to add that the draft has been twice circulated, in its original and in an amended form, to Local Governments and High Courts, and that the Bill as reported is the outcome of a most careful consideration on the part of the Committee of the criticisms which have been received from judicial officers and others engaged in the daily working of the Code, and therefore best able to indicate the points in which it is susceptible of improvement. To these gentlemen I desire to tender my best thanks for the valuable assistance which they have rendered and which has, I hope, enabled the Select Committee to work out a series of amendments of the Code which will simplify and facilitate in many important respects the administration of justice."

The Council adjourned to Friday, the 16th March, 1888.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 10th March, 1888.

Government of India Central Printing Office.—No. 542 L. D.—13-3-88.—208.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 16th March, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland.

The Hon'ble Rana Sir Shankar Bakhsh Singh Bahadur, K.C.I.E.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.

The Hon'ble W. S. Whiteside.

The Hon'ble J. W. Quinton, C.S.I.

The Hon'ble R. Steel.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Maharaja of Vizianagram.

INVENTIONS AND DESIGNS BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Protection of Inventions and Designs be taken into consideration. He said:—

"Since I presented the Report of the Select Committee on this Bill four weeks ago, I have had very few communications regarding it. Some suggestions have been made to which I will briefly refer.

"The first relates to the time given to foreign inventors within which to apply for an exclusive privilege for their inventions in British India. In the Bill this is fixed at one year from the date of the grant of the patent elsewhere than in the United Kingdom. It is urged that two and a half or three years should be allowed: but the Select Committee was distinctly of opinion that, in the public in-

terest, one year was a reasonable time to grant for such applications, and I have therefore been unable to accept this suggestion. On the same ground I propose to retain the provision that when a patent expires in the country of its origin it shall also expire in India. Where the public interest and the interest of the inventor are in conflict, the former must prevail: and there seems no good reason why patents which have expired elsewhere should be kept alive to the disadvantage of the people of this country.

"It has also been urged that section 30, which allows 'any person' to apply to a High Court to quash an exclusive privilege upon certain specified grounds, ought to be limited to those classes of persons who are entitled to petition the Courts in England for revocation of patents under section 26 of 46 & 47 Vict., c. 57, that is to say, the Advocate General or any one authorised by him, or any person alleging that the patent was obtained in fraud of his rights, or that he was the true inventor, or that he had manufactured, used or sold the invention before the date of the patent. This point had not escaped the notice of the Select Committee, who preferred not to cut down the larger words of the Act of 1859, but to impose the condition that when an exclusive privilege is thus attacked the Court may require the attacking party to give security for costs, and in this way to put a check on vexatious litigation.

"I have therefore no amendments to propose in the Bill."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MEASURES OF LENGTH BILL.

The Hon'ble MR. SCOBLE also moved for leave to introduce a Bill to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India. He said:—

"This Bill has its origin in five communications from the Bengal, Madras, Bombay, Rangoon and Karáchi Chambers of Commerce, asking that the English standard yard may be declared by law to be the standard measure of length for British India.

"The Bengal and Rangoon Chambers base their request on the general ground that it is anomalous that there should be no legal standard of length in

this country while there is one in the United Kingdom, and that the absence of such a standard causes, in their opinion, 'difficulties in the working of the piece-goods trade of the country.' The Karáchi Chamber's representation is in similar general terms, their main ground being that 'in the working of the piece-goods trade of this country a standard of length is essentially necessary for the protection and convenience of the same.' But the Bombay and Madras Chambers go more into particulars, and urge the fixing of a legal standard of length on the ground that, under the existing law, the marking of false lengths on cloth goods is not punishable, and ought to be made so.

"Without entering upon the question whether the existing law is sufficient to deal with cases of cheating by false measurement, I think it must be admitted to be desirable that some standard measure of length should be adopted, and that, by the adoption of such a standard, fraud will be at all events rendered more difficult than it is at present. This is not the first time that the question has been considered by your Lordship's Council. In 1870, Colonel Strachey introduced a Bill to regulate the weights and measures of British India, and described its object to be 'to adopt for India for the first time some fixed standard of quantity where none had hitherto existed, and to place once for all on a definite basis the multitude of transactions of trade and commerce which till now had been left to be settled too often in a manner that placed the buyer at the complete mercy of the seller and gave the most objectionable openings to fraudulent dealings.' Unfortunately, as I think, the French metre was adopted in Act XI of 1870 as the unit for measures of length; but this Act was disallowed by the Secretary of State, and Act XXXI of 1871, which took its place, relates only to measures of weight and capacity.

"On looking through the report of the Committee which was appointed in 1868 to revise the system of weights and measures for British India, and which report was the basis of the legislation of 1870, I find it stated, 'with reference to measures of length, the English yard, foot and inch appear to be now used generally throughout British India;' and again 'in linear measure the Department of Public Works has done much to introduce our scale. The English yard has partially superseded the ever varying *gaz* of the Native dynasties throughout India. In all parts of the country people now use the English foot and inch, and hawkers sell their cloth by the English yard.' It is probable that, in the twenty years which have elapsed since these observations were written, English measures of length have become even more widely used, and that the statement of the Bombay Chamber of Commerce may be accepted that 'the English yard, with its subdivision of feet and inches, is now so generally

known and used throughout the country that it forms by far the most convenient length for adoption.'

"The object of the Bill which I ask leave to introduce is to give a settled legal meaning to the words which denote these measures, and thus pave the way for future legislation on the lines of the Merchandise Marks Act, which came into force in England last year, and the main provisions of which appear to be quite as much needed in this country as at home."

The Hon'ble MR. STEEL said:—"The proposed legislation will be welcomed by the mercantile community. The Bill which the hon'ble member proposes to introduce is a small measure, but it is a necessary preliminary to further legislation. There is a general consensus of opinion that it will be soon desirable to legislate in India on the same lines as the Merchandise Marks Bill recently passed in England; but as that measure is of an extremely complicated character, and has already developed certain faults which will require amendment, there is a general agreement that it is not desirable to initiate hasty legislation in India. When full experience has been gained of the working of the English Act, and when it is decided to follow it here, the prior establishment of the standard measure will be found to have facilitated such legislation."

The Hon'ble RÁJÁ PEÁRI MOHAN MUKERJI said:—"When the Government of Bengal a few months ago invited public opinion on the desirability of having a law for defining a standard unit of measure, it was apprehended in certain quarters that the intention of the Government was to supersede all local measures of length by a uniform measure throughout British India. The observations made by the Hon'ble the Law Member will remove that apprehension. The object of the Bill which he wishes to introduce is very different from what was at that time apprehended. Different provincial Acts defined the unit of measure which should obtain in the presidency-towns of Calcutta, Madras and Bombay, but there was absolutely no law whatever declaring what was the unit of measure outside the limits of the presidency-towns. It is to fill the void in the Statute-book that I think the present measure is intended. Perhaps, looking to the discussions which took place in 1864, and to which the learned Law Member has referred, it would have been more desirable if the unit of the French metre had been adopted. But for the present at least we must, I think, be content with the standard measure which obtains in the United Kingdom."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 23rd March, 1888.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 19th March, 1888.

Government of India Central Printing Office. No. 554 L. D.—19-3-88.—308—A. Edgs.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 23rd March, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, R.E., C.B., C.S.I., C.I.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Peári Mohan Mukerji, C.S.I.

The Hon'ble G. H. P. Evans.

The Hon'ble J. W. Quinton, C.S.I.

The Hon'ble R. Steel

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

THE FALL OF FORT LINGTU.

On the members taking their seats, His Excellency THE VICEROY said:—"Before we commence the proceedings of today it may, perhaps, be interesting to the Council to know that Her Majesty's troops have taken possession of Fort Lingtu without opposition. On the 19th they came upon a small stockade erected by the Tibetans at which some opposition was encountered, but with their usual gallantry our troops rushed it, and the enemy fled with scarcely any resistance. The effect of this success seems completely to have disorganised them, and, as I have already mentioned, they have abandoned their position at Lingtu. I am in great hopes that this slight and facile vindication of our treaty rights will in future free the road through Sikkim which had been blocked by the enemy, and will close this trifling dispute which has unfortunately arisen between us and the Tibetans."

DEBTORS BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend the law relating to Imprisonment for Debt be taken into consideration.

The Motion was put and agreed to.

The Hon'ble RÁJÁ PEÁRI MOHAN MUKERJI moved that the following sub-section be added to section 10 of the Bill :—

"(3) The provisions of this Act shall not apply to suits under Act VIII of 1885."

He said :—"Several of the Local Governments and Administrations have reserved to themselves a special procedure for the recovery of their own demands of land-revenue. The Punjab, the North-Western Provinces, the Oudh, the Madras, the Bombay and the Central Provinces Revenue Codes provide for the imprisonment of the defaulter of land-revenue independent of the provisions of the Code of Civil Procedure. In Bengal the sunset law and the certificate procedure place perhaps larger powers in the hands of the Local Government as regards the enforcement of its revenue-demands. I do not for a moment contend that these exceptional procedures for the recovery of revenue-demands are open to any serious objection, but I do [illegible]estly contend that those who have to pay the revenue should not be [illegible]ed, except in cases of absolute necessity, of any procedure which the law has placed at their service for the recovery of rents from their tenants. The relations between landlords and tenants radically differ from the relations subsisting between ordinary creditors and their debtors. An ordinary creditor takes care to enquire into the circumstances of the person who wants to borrow, and satisfies himself of his character and of his solvency before he lends him money; whereas a landholder has to collect small sums of money from a large number of persons, a majority of whom are notoriously improvident. It is a case of involuntary creditorship in which the creditor has no power of preventing the contraction of bad debts. There is again the important consideration that, whereas an ordinary creditor in suing for the recovery of debt sues for money which belongs to himself, a large portion of the rents which a landholder sues to recover does not belong to himself, but has to be paid to Government. The legislature has, therefore very properly given exceptional procedures for the recovery of arrears of rent to landholders in the North-Western Provinces, Oudh, Madras and the Central Provinces.

"The effect of the measure now before this Hon'ble Council would be to place the landholders of Bengal and Behar in a singularly difficult position as regards the recovery of arrears of rent. While their brethren in several other provinces will continue to recover their rents under the present procedure, the landholders of Bengal and Behar, who have been recently deprived of the power of distraining the crops of their raiyats without the intervention of the Courts and

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ejecting them for non-payment of rent, would be deprived of a procedure which, without causing the slightest hardship to the raiyats, imposed a wholesome check upon improvidence and wilful recusancy. The proposed change of procedure is the more objectionable as official statistics clearly show that it is only in an extremely small number of cases that rent-defaulters are actually imprisoned. During the last official year it was only in about 600 rents-suits out of more than 100,000 that judgment-debtors were imprisoned for default of payment. There is, therefore, absolutely no case made out why there should be a change in the law regulating the relations of landlords and tenants so soon after it has been most carefully and elaborately considered and settled. It is not that this question of procedure was not considered by the Council when the Bengal Tenancy Bill was under consideration. The suggestion of the Rent Commission that the landlord shall not be entitled to resort to any other process for the recovery of rent until he has first brought the tenure or holding of the defaulter to sale was carefully considered and ultimately rejected. Unless, therefore, this Hon'ble Council were to amend the Bill in the way suggested by me, the proposed measure would have the effect of altering one of the most important provisions of the Bengal Tenancy Act."

The Hon'ble MR. HALLIDAY said:—"My Lord, I would ask for the indulgence of the Council to permit me to make a few remarks on the amendment just moved by my hon'ble friend—an amendment which I am unable to support.

"As I understand my hon'ble friend, he is opposed to the provisions of this Bill now before the Council being made to apply to suits under Act VIII of 1885, because, among other reasons, the zamindárs of Bengal, under the provisions of the Public Works and Road Cess Acts, are placed in the position that a large portion of the claim in rent-suits represents a sum which belongs to, and has to be recovered for, the Government, and not for the plaintiffs. Upon this point I think my hon'ble friend is holding an erroneous opinion.

"The proceeds of the road-cess are, under section 9 of the Cess Act, paid into the District Road Fund, and are applied to the purposes mentioned in section 109, which are mainly construction, maintenance and repairs of roads and bridges and other means and appliances for facilitating communications within the district or between adjacent districts, and the general control and administration of the fund is vested in a committee, formed under the principles of local self-government, chiefly of gentlemen who have the requisite qualifications as

payers of the road-cess of the district, and whose interest on that account it is to exercise the closest scrutiny over the manner of the expenditure of that fund.

"It can scarcely be a correct assertion then that the road-cess belongs exclusively to the Government.

"The proceeds of both the cesses in question are exclusively expended on improvement of the means of communication and other works of public utility, and these have the effect of raising the price of agricultrual produce in the producing districts.

"The zamindárs under the law are entitled to get, and do in fact get, a very large, if not the largest, share of the benefits of this rise in prices, by obtaining enhanced rents. It is indeed questionable whether in some districts in this province they do not receive by way of enhancement of rents the entire benefit of the rise in prices which results from improved facilities for communication, though under the law they pay only half the cost of effecting such improvements, as their raiyats pay the other half.

"I would urge then that the hon'ble member is mistaken when he says that the zamindárs receive no consideration whatever for the risk and trouble of collecting these cesses.

"They receive very great consideration in the enhanced rents to which they are entitled in consequence of the rise in prices which ensues from improvements in communications and from the general development of the province.

"I believe I am expressing the hon'ble member's own acceptation of the amount of the cesses in question in the province at the figure of 80 lakhs, and it seems to me that these figures go to prove that the zamindárs have not been slow to take advantage of the general development of the province by obtaining enhanced rents.

"The Cess Act is in force in 43 of the districts of Bengal, and in all but the one district of Backergunge the full rate of one anna in the rupee is levied.

"Now, if 80 lakhs represent the amount of these cesses, the rental of these districts must be at least sixteen times that amount, or, allowing for the half rates in Backergunge, the rental of these districts must be in round numbers 13 crores of rupees.

"Now, the Government land-revenue demand against these districts is three and three-quarter crores, or about one-fourth of the rental.

"When it is remembered that the permanent settlement was made on the supposition that the land-revenue represented nine-tenths of the rental, while now it represents only one-fourth part of it at the lowest estimate of the rental, it will be apparent how much the zamindárs have profited by increase in rents, due in a great measure to rise in prices from improved communications, and it will be evident how little cause that class has for saying that they get no consideration for the road and public works cesses. No valid argument for exclusion of their tenants from the operation of the Bill before the Council can therefore be based on this ground.

"I would urge, my Lord, that, whatever grounds there may be for giving the Courts discretion to exempt judgment-debtors from imprisonment in the execution of decrees, these grounds apply with greater force to agricultural raiyats than to any other class; because I hold that the possibility and probability of abuse of the power of imprisonment is greater in the case of raiyats than in the case of any other class; and moreover, in the case of cultivating tenants, the landlord or his agent most certainly has, or ought to have, a full knowledge of the position and circumstances of a defaulting tenant, whether he is insolvent or not, able or not able to pay; while it may be said that the *banyá* or the mahájan is at a disadvantage in that he does not and cannot always know the circumstances of his debtors. It may not be fair perhaps to make the assumption *ab uno disce omnes*, but still I may be permitted to give a forcible example of the abuse of such power of imprisonment and of its mischievous consequences.

"The instance I give is that of a village in a pargana in a certain district in which it became the duty of an officer of Government to re-settle rents, and this instance, I understand, was typical of the way rents were enhanced by landlords throughout that pargana. Rents had been formerly fixed at Rs. 2-12 a bighá; the landlord had been demanding Rs. 5-2. The head raiyats, representing the body of the raiyats, refused to pay. The landlord prohibited the cutting of their crops; the raiyats sued and got damages for the illegal distraint; they also sued for leases at Rs. 2-12, and succeeded in their suits. The landlord's brother then sued them for the sum of Rs. 700 on a bond for money supposed to be lent, which bond was contested as forged. The Civil Court peons were intercepted. The raiyats got no notice of the suit; the first they heard of it was by being arrested in execution of decree, and they were imprisoned for three months. Then the other villagers collected a sum of money amongst themselves and paid up the amount due. The raiyats in question were thereupon released, but being, as they said, helpless, they submitted to the enhance-

ment. This is an instance of one village only, but the results of a contest like this in one village strike terror throughout a pargana.

"I am afraid there can be little doubt that the abuse of the power of imprisoning raiyats for debt in execution of decrees has sometimes led to deplorable results in Behar and elsewhere, while it can hardly be seriously contended that the power of imprisonment is necessary in order to make solvent raiyats pay rents which they can and ought to pay but refuse to pay.

"Experience has shown me that the power of imprisoning raiyats is seldom had recourse to for the purpose of making them pay admitted or just demands, but it is often used to enforce prospective demands which are unjust, and in order to compel ignorant tenants to assent to illegitimate enhancements.

"When the law can be made an instrument of abuse the hour for reform has struck.

"I do not understand, my Lord, how any argument in favour of the exclusion of suits under the Bengal Tenancy Act can be based on the ground that the Tenancy Act deprived the Bengal zamindárs of the power of ejectment and distraining of crops.

"All that the Tenancy Act has done in these matters is to regulate the procedure by which distraint is to be made, and to define the conditions under which a tenant may be ejected, but it does not abolish the power of ejectment or distraint.

"But even were it otherwise, the retention of the arbitrary power of imprisonment, if bad in itself, cannot be justified on the ground that some other power formerly exercised by zamindárs has been curtailed or restricted."

The Hon'ble MR. QUINTON said:—"I must oppose the amendment. Throughout the greater part of British India, in Lower Bengal, in Bombay, in the Punjab, in the Central Provinces and in Lower Burma, the legislature has affirmed the principle that decrees in favour of landlords against tenants for arrears of rent should be executed in the same way and by the same processes as money-decrees in favour of other creditors.

"The Bill now under consideration modifies the law in respect to one of these processes, namely, imprisonment, as explained by my hon'ble friend Mr. Scoble on the 24th of February last, when presenting the Report of the Select Committee. Under the existing law any creditor who wishes to imprison

his judgment-debtor has only to apply to the Court charged with the execution of the decree, and the Court, if certain preliminary formalities are complied with, must thereupon arrest the debtor, and, if he fails to satisfy his creditor, send him to jail. It has no option in the matter. It is true that the debtor has a partial remedy by which he may escape imprisonment, namely, by applying to be declared an insolvent, but the Select Committee were satisfied that this remedy was not resorted to to the extent which might be reasonably expected, and that from its nature it was not sufficient to meet the evil against which the Bill is intended to provide. This procedure is altered by the Bill in two important points—(1) women are not to be imprisoned at all in execution of money-decrees, and (2) in the case of male debtors, the option of imprisonment is to rest with the Court and not with the creditor.

"The amendment on the table asks the Council to make an exception to the Bill in favour of decrees passed under the Bengal Tenancy Act. The effect of the amendment will be that the landlords of Bengal will retain the power of imprisoning through the ministerial action of the Courts their tenants against whom decrees for arrears of rent have been given, while all other landlords throughout India and all other judgment-creditors in Bengal, as well as in the rest of the empire to which the Code of Civil Procedure extends, will be deprived of this power.

"I am quite willing to admit that the case of the Bengal zamindárs differs in some important respects from that of landlords in the greater part of the rest of India. In the first place, they are now paying a revenue that was fixed ninety years ago, whereas elsewhere the revenue now paid was settled within comparatively recent periods. Again, that revenue has been fixed for all time, whereas other landlords, less fortunate, know that their revenue will be liable to enhancement once in a generation. While in other provinces the revenue was fixed with more or less reference to the rent obtainable from the land, in Bengal there was no such canon of assessment, and the long lapse of time since the permanent settlement has operated to increase the difference between the aggregate amounts paid as rent and as revenue. In Bengal 90 or 95 per cent. of the tenants are said to be tenants with rights of occupancy and their tenures are saleable in execution of decrees for arrears of rent. In other parts of India the landlord has not commonly this security. The Bengal zamindár, in common with the landlords of the North-Western Provinces, Oudh, Madras and the Central Provinces, has the right of recovering arrears by distraining the crops of his tenant. It is true that this privilege must be exercised through the Court, but even with this limitation, which was advisedly imposed three years ago,

the Bengal zamindárs are in a position superior to that of the Punjab and Bombay, where no such right of distraint exists at all. These differences between the relations of the Bengal zamindár to Government and his tenants and the corresponding relations of landlords in most other parts of India do not seem to justify the former in demanding exceptionally favourable treatment in the matter to which the Bill refers. They raise an *à priori* presumption that the Courts in Bengal should have the power, which we propose to give the Courts in other parts of India, of determining whether a tenant judgment-debtor should be sent to prison or not—a presumption not rebutted by anything that has fallen from the hon'ble mover of the amendment.

"The hon'ble mover has over-estimated the number of provinces excluded from the operation of the Bill. It is only in the North-Western Provinces and Madras that the procedure in collection of rent-decrees is not governed by the Code of Civil Procedure. I would point out that the law as regards imprisonment in execution of rent-decrees in the two provinces already does very much what the Bill proposes to effect elsewhere. In the North-Western Provinces the Collector, by whom rent-decrees are executed, is not bound to send to jail a judgment-debtor who satisfies him that he has no *present* means of paying the amount of the decree; and in Madras a rent-defaulter is only sent to jail if there be no property to distrain or no saleable interest in the land, and if the Collector has reason to believe that the defaulter is wilfully withholding payment of an arrear or has been guilty of fraudulent conduct in order to evade payment.

"I am glad to observe that the hon'ble mover had no complaint to make against the law for the realization of revenue—a subject which is quite distinct from that of the present Bill; but, as pointed out by my hon'ble friend Mr. Halliday, the revenue of Bengal is about 25 per cent. of the rental, and the argument that no obstacle should be placed in the way of landlords realizing rent-decrees which constitute a large proportion of the money payable to Government as revenue comes with the worst grace from Bengal zamindárs, who in this respect are in a much better position than landholders elsewhere.

"The argument from statistics urged by my hon'ble friend seems to me to tell rather against him. The Bill in the opinion of the Select Committee should extend to all provinces where the procedure in rent-suits is regulated by the Code of Civil Procedure; and the amendment asks the Council to make an exception in favour of Bengal. It is urged that it is not worth while to make an alteration of the law in that province, as the cases in which imprisonment is

resorted to are so few. But, if this be so, where is the necessity for treating Bengal in an exceptional manner? The burden of proving that it should be so treated rests on the supporters of the amendment, and by their own shewing the figures quoted prove that the alterations proposed by the Bill can have very little effect there."

The Hon'ble SYUD AMEER HOSSEIN said—"My hon'ble friend having very ably advocated the cause of the zamindárs in support of his amendment, I beg, with Your Excellency's permission, to lay before the Council in a few words the other side of the question.

"We are to consider whether a raiyat should in respect of a debt covered by a rent-decree obtained against him by the zamindár be excluded from the benefit of the proposed law as regards the issue of a rule *nisi* before a warrant of arrest is issued against him. I feel no hesitation in saying that he should not be excluded from the benefit of this indulgent provision.

"The raiyat, of all debtors, should not be lightly sent to jail. As a factor in the food-supply of the country, he represents a class in whom the public generally are interested. His debt is practically a secured debt, the zamindár having the right to distrain his crops and to sell his tenure.

"If we go back to the provisions of the former Codes of Civil Procedure and the former Rent Acts and Regulations, we will find that there has been a parallel provision for the liability of a debtor in a money-decree and a debtor in a rent-decree to imprisonment in the execution of the same. But now that the legislature has thought it proper to give the debtors of money-decrees generally a chance to show cause against their arrest and imprisonment, I do not see why exception should be made against the debtor in a rent-decree.

"No honest and prudent zamindár would like to have an honest, though an unfortunate, raiyat locked up so long as he could have recourse to the other provisions of the Tenancy Act of 1885 for the realization of decrees in rent-suits.

"In the case of dishonest raiyats, the provision of section 4 of the Bill, by which the proposed law has been safeguarded, seems to me to be quite sufficient."

The Hon'ble Sir CHARLES AITCHISON said :—"I shall oppose this amendment. In the first place, the principle that in the province of Bengal the procedure in suits between landlords and tenants should be the ordinary civil procedure for the time being in force has been already adopted by the legislature. We are all familiar with the history of Act X of 1859, which is a landmark in

Indian legislation. By the provisions of that Act the jurisdiction of the Civil Courts was altogether barred in suits of the kind referred to in the amendment, which were made cognizable only in the Revenue Courts and under the special procedure laid down by the Act. Experience showed in a very short time that this was a mistake, and that in Bengal at any rate suits of the kind involve difficult questions of law and fact with which the ordinary Civil Courts were more competent to deal. Accordingly, after ten years' experience, the policy was reversed and the jurisdiction of the Civil Courts was restored by Bengal Act VIII of 1869, entitled *an Act to amend the procedure in suits between landlords and tenants.* Section 33 enacts that 'the jurisdiction of the Collectorate Courts to entertain such suits, save as regards any suits or proceedings then pending, shall cease, and all suits brought for any cause of action arising under Bengal Acts X of 1859, and VI of 1862 shall be cognizable by the Civil Courts according to their several jurisdictions.' And section 34 provided that 'suits of every description brought for any cause of action arising under the Act, and all proceedings therein, shall be regulated by the Code of Civil Procedure, being Act No. X of 1877, and by such further and other enactments of the Governor General in Council in relation to civil procedure as now are, or from time to time may be, in force; and all the provisions of the said Act and of such other enactments shall apply to such suits.' In Bengal, therefore, the special procedure in cases between landlords and tenants failed after trial; and the legislature expressly enacted that the procedure was to be the common procedure from time to time determined upon for ordinary civil suits. And this principle is still maintained. Section 143 of the Bengal Tenancy Act of 1885 gives power to the High Court, with the approval of the Governor General in Council, to make rules declaring that any portions of the Civil Procedure Code shall not apply to suits under that Act or shall apply to them subject to modifications; but the High Court has not yet seen fit to exercise that power. I can see no justification therefore for legislating now in a manner inconsistent with the policy deliberately adopted and followed for the last twenty years. There is indeed all the less necessity in that the High Court has power to prevent the application of any of the provisions of the general civil procedure which experience may show to be unsuitable.

"In the next place, except in the case of women, this Bill does not abolish imprisonment for debt, but leaves it to the Courts to determine whether or not imprisonment should be enforced. At present the Courts have no such discretion. Imprisonment depends upon the caprice of the creditor and not upon the merits of the case. The amendment, if carried, will still leave this power in the hands of landlords. Now, that the liberty of any subject of the Crown

however humble, should be at the mercy of any man, however powerful or rich, even if the Court does not consider that the debtor should be imprisoned, is a state of things which ought not in my judgment to be tolerated by the laws of any civilized Government. The greatest of criminals even are not treated so, and it seems to me that Courts of justice exist for the express purpose of preventing the possibility of such things."

His Honour THE LIEUTENANT-GOVERNOR said:—"I, too, must oppose the motion of my hon'ble friend opposite. It seems to me that the landlord who wishes that the Bill which is now before the Council should not be applied to suits in which the judgment-debtors happen to be agricultural raiyats makes a proposal to limit the value of that law in the very point and with respect to the very classes in respect to which the law is likely to be most valuable, and in which in my opinion it is most seriously needed. The law does not prevent the hon'ble gentleman from imprisoning his defaulting raiyat. What it does do is to say that he should not imprison his debtor without first giving him an opportunity of being heard by the Court, and yet he would take away this small safeguard and say 'No, he must be imprisoned on my dictum and not on that of the Judge.' I say that the safeguard provided by this Bill is more needed in the case of agriculturists than in respect of debtors of other classes, and I say so for this reason: my hon'ble friend has himself pointed out in how few cases it has been found requisite absolutely to imprison judgment-debtors on decrees for rent. Why then is it necessary to keep those sections of the old law as they stand? It is necessary as a most powerful reserve to those who apply a systematic method in harassing, worrying and finally breaking down those raiyats who combine to resist enhancement. The system by which monthly suits for arrears of rent are in very many cases in certain estates regularly introduced with the view of breaking down the opposition of raiyats was brought before the Council during the discussions on the Bengal Tenancy Bill, and I need not now refer to it further than to mention that the efficacy of that system depended upon the ability of the landlord to bring refractory raiyats to book by imprisoning them. The advantage is really immense to take a leader of the opposition and have him imprisoned without reference to what he may have to say before the Judge, and thus break down the opposition. Now, that is not a healthy state of things. The state of things proposed by the present Bill, by which a judgment-debtor may be afforded an opportunity to show before a Court of law why he should not be imprisoned, must be considered by everybody but the zamindárs—I would believe by most of them also—to be a far more healthy state of things. It is not the case that the Bengal landholders are absolutely helpless in the way of reaching their judgment-debtors. It is true, as my hon'ble friend has pointed out,

that the power of distraint is somewhat limited by the Bengal Tenancy Act, but, on the other hand, the power of sale is strengthened and legitimatised. The facilities which a zamindár who is a judgment-creditor now has of selling up the tenure of his defaulting raiyat is certainly a facility greater than is given by the laws of other provinces, and may well be set against the deficiency in point of distraint. For these reasons I must oppose the amendment of my hon'ble friend."

The Hon'ble RÁJÁ PEÁRI MOHAN MUKERJI said:—"The liability to pay cesses to which the Hon'ble Mr. Halliday referred may, I think, be considered an additional ground on which this Hon'ble Council should support my amendment. Cesses belong exclusively to the Government; no part of them goes to the coffers of the landholders. On the other hand, it is admitted that most landholders have to bear heavy losses in collecting cesses for the Government on account of bad debts, desertions, deaths and other causes. The accusation that the zamindárs want the present law because it places in their hands an engine for crushing their raiyats is based purely on sentiment, and it falls to the ground when it is seen that, during all these years in which the present procedure has been in operation, the landholders behaved in anything but a vindictive spirit in applying for the imprisonment of their raiyats for non-payment of rent. The great difference which the Hon'ble Mr. Quinton tried to make out between the profits of the landholders of Bengal and Behar and the landholders of other provinces is, I think, not borne out by facts. The question has been taken out of the region of controversy, and it is now a matter of bare reference to official records to determine what ratio the rent collected by landholders bears to the revenue collected by the Government. I am in a position to submit to the Council authoritatively the ratio which the revenue bears to rent. It varies from 50 per cent. to about 10 per cent. But in districts like Hooghly, Burdwan and the 24-Pergunnahs the ratio which the revenue bears to rent is very high. The fabulous wealth of the zamindárs of Bengal and Behar, based on figures which were placed before the public by irresponsible persons, should have no influence whatever on the hon'ble members of the Council in the consideration of this important question. I appeal to them to refer to official statistics on the question. His Honour the Lieutenant-Governor referred to the practice of landholders recovering their rents by monthly instalments. That, I submit, was an unfortunate allusion. The Government itself some years ago collected its revenue by monthly instalments, and the zamindárs were expected to recover their rents by monthly instalments in order to pay their revenue to Government."

[His Honour THE LIEUTENANT-GOVERNOR—"I referred to monthly suits, not to the payment of rent by monthly instalments."]

"Suits for monthly instalments were extremely rare and should not be taken into account in the consideration of a general question like this; and the Government was not satisfied in recovering its revenue by monthly instalments, but they charged interest at 25 per cent. on all arrears of such revenue. His Honour also said that 'although the right of distraint had been in some measure taken away from the landholders, they had been given increased facilities for the sale of tenures and holdings.'

"I do not remember that any increased facilities whatever in that direction had been given to landholders by the Bengal Tenancy Act which they did not possess before.

"The Hon'ble Mr. Ilbert, in submitting the Report of the Select Committee, expressed his regret that, although one of the objects of the Bill was to give larger facilities to the landholders for the recovery of rent, the Committee had been unable to accept any of the suggestions which had been put forward for simplification of the procedure for the recovery of rent. The question of giving increased facilities for the recovery of rent by the sale of holdings and tenures was fully discussed; and it was at the instance of the Bengal Government that those provisions were excluded from the Bill, on the ground that they would lead to the creation of a class of middlemen to the injury of the cultivators of the soil—a supposition which has been since borne out by the events which have taken place in the Dekkhan, and the Sonthal Parganas in the territories under the Lieutenant-Governor of Bengal, where the introduction of the free sale of tenures and holdings had led the Government to put a stop to all sales of raiyati holdings. I submit, therefore, with great confidence that not a single argument has been adduced to show why Bengal and Behar should have an exceptional law for the recovery of rent by landlords from their tenants when the law in the North-Western Provinces, in Oudh, in Bombay and in the Central Provinces—in fact, in almost all the other provinces in India—is very different. The Hon'ble Mr. Quinton has said that the onus lies on me to show why Bengal should have an exceptional law favourable to the landholders. I submit that his assumption is wholly erroneous, as the effect of the present Bill, if it is not amended, will be that it will not touch imprisonment of raiyats for debt in most of the other provinces in British India, whereas it will materially alter the law which obtains in Bengal and Behar. I shall give a short summary of what the law is in other provinces. In the Punjab the revenue law provides for the imprisonment of

the debtor. The rent law allows no imprisonment, but it provides that no right of occupancy can grow by lapse of time. In the North-Western Provinces the revenue as well as the rent law provides for imprisonment. In Oudh the revenue law provides for imprisonment, and the rent law provides for imprisonment subject to the provisions of the Code, but there landholders have this additional privilege that they can distrain crops of their own accord. In Madras both the revenue and the rent law provide for imprisonment of the debtor. In Bombay the revenue law provides for imprisonment of the debtor. In the Centrál Provinces the revenue law provides for imprisonment of the debtor, and landholders distrain crops of their own accord against all but 'absolutely' occupancy-tenants. The consequence will therefore be, if the present amendment is not carried, that in large portions of the rest of British India landholders will have the power of imprisoning rent-defaulters independently of the provisions of the Code of Civil Procedure, whereas in Bengal and Behar, where it is admitted that landholders require facilities for the recovery of rent, the law, as settled after most careful consideration, will be disturbed. The Hon'ble Sir Charles Aitchison observed that the Bengal Tenancy Act provides that the procedure contained in the Code of Civil Procedure should be the procedure in execution of decrees, unless the High Court sees fit to exclude any part of it from application to rent-suits, but there is no legal bar to any amendment of the Code of Civil Procedure, although it affects the procedure in execution of decrees in rent-suits. I submit that when the Bengal Tenancy Act was passed the legislature carefully excluded those portions of the Code of Civil Procedure as regards execution of decrees which they thought would be inapplicable to execution of decrees in rent-suits. I may mention that sections 305 and 320 to 326 of the Code of Civil Procedure are declared inapplicable to rent-suits not in the interests of raiyats but in the interests of landholders. And it was simply with a view to save the bulk of the Act swelling to large dimensions that the provisions of the Code of Civil Procedure which are applicable to the Bengal Tenancy Act were not bodily incorporated in that Act. It would be, I think, assuming a state of things which was never intended by the legislature which passed that measure to suppose that important provisions affecting the relations between landlords and tenants could be similarly altered by altering the provisions of the Code of Civil Procedure so soon after that Code was passed by the Council."

The Hon'ble MR. SCOBLE said:—"With reference to one matter which has been referred to by the hon'ble mover of the amendment, I wish to state that I think he is in error regarding the procedure which is now in force in other provinces besides Bengal. I had a careful note prepared and submitted

to the Select Committee as to the law which exists in the provinces of India generally with reference to the enforcement of decrees against rent-defaulters. I have that note now before me, and it fully bears out the state of the law as described by the Hon'ble Mr. Quinton. In the Punjab, Oudh, Bombay, the Central Provinces and in Lower Burma a rent-defaulter against whom a decree is passed is liable to imprisonment in execution of the decree under the Civil Procedure Code for the time being in force. If the Council today adopts this Bill, the provisions of the Civil Procedure Code in reference to the execution of decrees in rent-suits in those provinces will be those incorporated in this Bill. In the North-Western Provinces and in Madras the law is as has been stated by the Hon'ble Mr. Quinton."

The Motion was put and negatived.

The Hon'ble MR. SCOBLE moved that the Bill, as amended, be passed.

The Hon'ble LIEUTENANT-GENERAL CHESNEY said:—"I think the Select Committee and the Council may be congratulated on the passing of this Bill, which I regard as a very useful step forward in the direction of a more humane and equitable treatment of this branch of the law. My only regret personally is that the Select Committee has not seen its way to go still further in the direction of abolishing the law of imprisonment for judgment-debtors in the terms of the original draft of the Bill. My hon'ble friend Mr. Scoble, when presenting up the Report of the Select Committee, observed that the provisions of the draft Bill had been objected to by a majority of high authorities who had been consulted; he added further that there was a strong and apparently a weighty minority in favour of the more liberal provisions of the draft Bill. Of course, it will be understood that under the method and the procedure adopted by the Select Committee it was not open to him in a general way to do more than put into form the recommendations and opinions which the Select Committee had received from the authorities consulted, and, the majority having expressed their opinions against it, it was perhaps not open to the Select Committee to do otherwise than to act on those suggestions. At the same time I am not surprised to find that the general opinion of the majority of the authorities consulted was unfavourable to the full conditions of the draft Bill, because I think that it is a matter of observation that lawyers generally are opposed, and have in most times been opposed, to a reform in the law in the direction of making its provisions less severe. We may remember that when any modification or reform has been proposed in the criminal law of England, there have always been found great legal authorities to object to these reforms and to declare

that if these severe penalties and conditions were modified there would be an end to all social obligations, as that, for example, if a man was not hung for stealing a sheep or a few shillings from the person, then all social and commercial business would come to an end; and so, in the various reforms which the law of imprisonment for debt has undergone, there have never been wanting authorities to protest that the particular reform would be followed by disastrous consequences to the commercial and revenue laws. Happily the result has always been that notwithstanding these reforms the business of the world has gone on as smoothly as before. The truth seems to be that in all these matters we are somewhat under bondage to the conditions of the old Roman law. No doubt the modern world is under great obligations to the Roman nation for their system of jurisprudence. That people, with their remarkable love of order and method, instituted a system of laws which was a vast improvement on the law which then existed in all other parts of the world, equally superior to the total absence of law in despotic countries as to the fanciful and fickle procedure obtaining in the Greek republic, where the whole of the free people sat in judgment in a case both as judge and jury. It is not wonderful, therefore, that, as the world emerged from the barbarism of the middle ages, those who had the business of legislation adopted the Roman Code. And to that could be traced the extreme severity obtaining for many generations relative to the law of debt. Now, it is not surprising that the Roman law of debt was very severe, because it was more or less in keeping with their hard ideas of jurisprudence. Under their law the master or the head of the house had absolute power not only over his servants but also over his own children and the members of his family, and it is not surprising that men should be sold into slavery for not being able to pay their debts. The tradition of imprisonment for debt was a tradition handed down from those days; but in establishing imprisonment for debt one object of this imprisonment was lost sight of; when a man became a slave in the old days he could work out his redemption, whereas under the modern system the debtor was subject to useless imprisonment. However, the practice of life-long imprisonment for debt has happily been abandoned. First of all, the term of imprisonment was reduced to two or three years. At the present time it was six months and for small debts six weeks; but I regret to see maintained in the new measure the apparent inconsistency in this distinction between the penalty prescribed for small debts and that for large ones. I fail to see why a man should be liable to a greater punishment because the debt is greater in one case than in another. It seems to me that the penalty due depends entirely upon the nature of the case and not on the amount, and that a person with a small debt may be just as criminal as another person whose debt is large.

However that may be, I think the proposals of the Select Committee are all good as far as they go and in the direction of wise reform, and that they may be accepted as a valuable instalment towards the completion of a process when—and I hope the time is not far distant—imprisonment for debt will be entirely abolished."

The Hon'ble MR. SCOBLE said:—"I wish to make one observation with regard to what has fallen from my hon'ble and gallant colleague, because I think it is of some importance as regards the functions of Select Committees. I cannot accept, on behalf of Select Committees of this Council, the statement that they have only to register the opinions of the majority of the authorities consulted. The function of the Select Committee is to sift those opinions, and to ascertain from them what upon a consideration of the whole matter is best suited to the circumstances of the country. Having come to a conclusion, it is their business to recommend it to the Council in the form best calculated to attain the object aimed at. I wish also to say one word in defence of my own profession, which has been, I think unjustly, assailed by my hon'ble and gallant friend. I may remind him that, if he will look into the history of law reform in the present century, he will find that the greatest law reformers have been lawyers. The names of Romilly, Brougham, Jervis, Campbell and Cairns are a few among the eminent men who have devoted themselves to the amendment of the law with an experience and a success which I venture to say no layman could have attained. If the Bill now under consideration does not accomplish as much as the gallant General could have desired, I am bound to say that it has been framed to meet the wishes of men of business, whom it most nearly concerns, rather than to gratify any conservative feeling that may be supposed to be entertained on the subject by the legal community."

The Motion was put and agreed to.

CIVIL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed.

The Hon'ble MR. EVANS said:—"There are a good many amendments of the Civil Procedure Code contained in this Bill. Some—in fact, the majority

of them—arose out of difficulties in the construction of the existing Code which have been felt by the different Courts which have been administering the law In many cases the Courts have not been able to agree as to the true construction, and something was necessary to be done to make matters clear. There is another class of amendments arising from the fact that certain matters are not provided for by the Code regarding which the Courts have found difficulties, and there is a general desire to have these matters provided for. Most of the amendments which have been made by the Bill do not now require any detailed remarks before this Council, as no amendments have been proposed, and I may take it that they are generally accepted by the Council. But there is one provision as to which there is a good deal of conflict of opinion, and I wish to make a few remarks in respect of that provision. I refer to the provision that Judges who have been selected by the Local Government should have power to take down the evidence in English although it may be given in the vernacular. Although there has been a good deal of difference of opinion as regards this matter, clearly the balance of opinion is in favour of making the change; and I think that in making the change we have met the difficulties which have been suggested by providing that this power should only be given to Judges selected by the Local Governments, who will no doubt have regard to the knowledge which the Judges have of the vernacular in certain places, and also to the knowledge which the pleaders who appear before such Judges have of English as well. In many cases there will be no difficulty in finding Judges who have such a competent knowledge of the vernacular that there would be little chance of error in the record of the evidence taken down by them. Where there might be a possibility of such error, if the pleaders have a competent knowledge of English, we may safely trust them to draw the attention of the Judge to the error if he has misinterpreted the evidence or taken down wrongly what the witness said; they are wary enough to do it, and the error would thus be corrected. The Local Governments will, I have no doubt, exercise the power given to them in a cautious manner; we have given to the Local Governments power to make the experiment. If it proves a success,—as I have little doubt it will,—it will be an enormous gain as regards the saving of time and the expense of making translations and the rapidity with which appeals can be brought to hearing before the higher Courts. It will enable the Judges to get through more work within a shorter time and greatly lessen the expense of appeals. Anything which will lessen the cost of obtaining justice from the Courts of law will be a measure of great imperial importance."

The Motion was put and agreed to.

At the conclusion of the business of the Council His Excellency THE VICEROY said:—"This Council will now adjourn *sine die*, and as it will probably not be my good fortune to preside again over so full a meeting, or in the presence of His Honour the Lieutenant-Governor of Bengal, I trust I may be permitted to express my deep sense of obligation to all its members for the assistance which they have given to the Government in the discharge of its legislative duties. I especially desire to tender my thanks to the non-official members, who have been good enough to sacrifice their time and pretermit their private and professional pursuits in order to devote their energies to the business of the country, and to give us the advantage of their experience. I can assure them that, as representatives of an independent public opinion, and of those various important interests which form so large an element in the Indian commonwealth, my colleagues and myself have welcomed their presence with the greatest satisfaction. I also wish to convey to our Native colleagues my appreciation of the ability with which from time to time they have handled the various matters which have come up for consideration. The manner in which they debate the several questions under discussion in a language which is not their own has always been to me a matter of surprise and admiration. I have been equally struck by the good temper, the courtesy and gentlemanlike bearing with which they engage even in the warmest controversies. I think I may congratulate the Council on the very considerable amount of work which has been done during the four sessions over which I have presided. The number of Acts which have been passed has been no less than 73. Amongst these may be mentioned the Bengal Tenancy Act, the Oudh Rent Act, the Provincial Small Cause Courts Act, the Indian Marine Act, the Punjab Tenancy Act, the Punjab Land-revenue Act, the Inventions and Designs Act, and last, though by no means least, the Debtors Act. It must always be remembered that the debates which take place round this table, and to which the public are admitted, form but a very small part of the labours of the Legislative Council, inasmuch as the time, thought and attention devoted to Bills in Committee are infinitely greater than that which the Council when assembled in its full numbers is required to give them. It is true the Acts I have enumerated do not belong to that category which excite abnormal and universal attention throughout the country, but they have not for that reason been the less beneficent in their operation. In fact, if we regard our land legislation alone, as it affects Bengal, Oudh and the Punjab, it will be found that the labours of this Council have contributed vastly to the security, happiness and content of many millions of our fellow-subjects. I have also especially to express my thanks to the Legislative Department, and I shall always remember

with gratitude the industry and devotion which Mr. Ilbert and Mr. Scoble, assisted by Mr. James, have given to the preparation of those various Bills which have eventually secured the assent of the legislature. Neither their colleagues nor the general public have any adequate idea of the amount of thought, correspondence, labour and research which are necessary before a Bill can be brought up for the consideration of the Council. I am glad to be able to add that experience has proved—and a sufficient time has now elapsed to justify the statement—that the legislation upon which we have been engaged during the last four years, whatever opinions or doubts existed at the time, is now admitted to have been necessary and desirable, and to have worked advantageously in the interests of those for whom it was initiated."

The Council adjourned *sine die.*

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 26th March, 1888.

Government of India Central Printing Office.—No. 59; L. D.—26-3-88.—308 —A. E. deS.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 11th July, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble J. Westland, C.S.I.
The Hon'ble G. R. Elsmie.

NEW MEMBER.

The Hon'ble MR. ELSMIE took his seat as an Additional Member.

METAL TOKENS BILL.

The Hon'ble MR. WESTLAND moved that the Bill to prohibit the making or issue by private persons of pieces of metal for use as money and the making of coins in resemblance or similitude of coins of Foreign States be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Sir Charles Aitchison, the Hon'ble Mr. Elsmie and the Mover.

The Motion was put and agreed to.

MEASURES OF LENGTH BILL.

The Hon'ble MR. SCOBLE moved that the Bill to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India be referred to a Select Committee consisting of the Hon'ble Sir Charles Aitchison, the Hon'ble Mr. Westland, the Hon'ble Mr. Elsmie and the Mover.

The Motion was put and agreed to.

TOLLS VALIDATION BILL.

The Hon'ble MR. ELSMIE moved for leave to introduce a Bill to remove doubts as to the legality of the levy of certain Tolls. He said :—

"The advisability of passing a brief measure for this purpose was suggested by the Government Advocate of the Punjab, whose attention was drawn in the course of his duties to the question whether Acts VIII of 1851 and XV of 1864 were in force in that province. The decision of that question turns upon certain considerations of a technical nature, and both lawyers and judges might well differ as to the view which should be taken. In an appellate case decided by the Chief Court of the Punjab in 1883, judgment was given on the assumption that Act VIII of 1851 was in force. Later, however, in a case in another Court the question was subjected to more detailed examination, and the Government Advocate came to the conclusion that, whatever the correct view might be, the matter was one which involved a certain degree of doubt which it would be well to remove in respect to all future collections of tolls. The opinion of the Government Advocate has after full consideration been accepted both by the Local Government and by the Government of India, and a Bill has been prepared the object of which is to validate the past and future levy of tolls in the Punjab under Acts VIII of 1851 and XV of 1864. The opportunity has also been taken to confer in express terms on the Lieutenant-Governor of the Punjab and the Chief Commissioners of Burma, the Central Provinces and Coorg, and on the Local Government of any other province in which the Acts may for the time being be in force, the authority which is conferred on the Governor of Fort St. George in Council and the Lieutenant-Governors of Bengal and the North-Western Provinces by section 2 of the Act of 1851, and to declare the word 'Presidency' in section 8 of the Act to mean the territories under the administration of a Local Government."

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also introduced the Bill.

The Hon'ble MR. ELSMIE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 25th July, 1888.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA;

The 13th July, 1888.

G. C. Press, Simla.—No. 133 L. D.—13-7-88.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., Cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 25th July, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland, C.S.I.

The Hon'ble G. R. Elsmie.

INDIAN TELEGRAPH ACT, 1885, AMENDMENT BILL.

The Hon'ble SIR CHARLES ELLIOTT moved for leave to introduce a Bill to make an addition to the Indian Telegraph Act, 1885. He said:—

"The Statement of Objects and Reasons explains that the object of this Bill is to remedy an oversight.

"The nature of that oversight is this. The officials of the Telegraph Department have to enter occasionally on private property for the purpose of setting up telegraph posts, and may have to do damage to private property, chiefly in the way of cutting down trees, in order to clear the line for their telegraph wires: and it was necessary in the Telegraph Act to provide that certain officials should have power to authorise this entrance on private property, and to assess the damages payable to the owners for the injury done.

"In the first draft of the Telegraph Act the words used were that these officers should be such as the Local Governments should appoint; but eventually, with a view to greater precision and definiteness, it was decided that it would be better to specify those officers by their titles, and in the Act as finally published it was provided that the powers in the first class of cases should be exercised by the Magistrate of the district, and in the second

class of cases by the District Judge. It was, however, overlooked at the time that there were certain areas, namely, the three presidency-towns, in which no District Magistrate existed, and that in these and also in Rangoon no District Judge exists. This is the oversight which it is now necessary to remedy, and it is proposed to do this by providing that in the three presidency-towns the Commissioner of Police should exercise the powers of a District Magistrate, and that the Chief Judge of the Small Cause Court should exercise those of a District Judge. In Rangoon the latter powers are to be exercised by the Judge of the Small Cause Court. These proposals have been circulated among the Local Governments and Local Administrations concerned, and they have all agreed that these are the proper officers to exercise such powers."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES ELLIOTT also introduced the Bill.

The Hon'ble SIR CHARLES ELLIOTT also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

SALT-DUTY BILL.

The Hon'ble MR. WESTLAND moved for leave to introduce a Bill to regulate the payment of duty in respect of Salt where there has been an alteration of the rate of duty payable in respect thereof. He said :—

"It is important to explain, in the first place, that this project of law has no connection with any present intention of altering the rate of the salt-duty. It is brought forward to correct certain inequalities in the existing law which made themselves evident at the time of the change of the salt-duty in January last. The intention to remedy these inequalities by legislation was formed in January last, but it was considered inadvisable to take up the subject until trade had resumed its natural course and the question could be discussed both by the Government and by the salt-traders as one that had no reference to existing facts or existing intentions.

"It is to be noted that the moment an increase in salt-duty is announced the immediate effect is to send up prices by the full amount of the duty; because it is obvious that any holder of salt on which the lower rate of duty

has been paid, if he wants to realise the higher price, has only to held back his stock until the more highly taxed salt comes into consumption. The consumer therefore has immediately to pay the new rate of duty. Now, by the operation of an existing provision of law, namely, the proviso to section 37 of the Sea Customs Act of 1878, we are obliged to continue to levy the smaller rate of duty only upon all salt that is at sea at the time the enhancement of duty is announced. The consequence is that those who happen to be the holders of that salt are by this artificial arrangement of the law—and not by any natural operati[illegible]rising out of the course of trade—placed in such a position that t[illegible]ise the enhancement of duty from the consumer without having [illegible] pay the enhancement into the treasury. I believe I am correct [illegible] mercantile opinion, or at all events some very adequate exponents [illegible] inion, consider that this proviso to section 37 works unequally [illegible] upon ordinary customs-duties, and that it is in no way necessary to make the concession to holders of goods at sea that they should be able to import them at a favoured rate of duty. But the difference in the case of other goods is a very small one, and at most the treasury only temporarily gives up a small amount of the leviable duty to prevent loss to importers who may have made contracts for sale on the basis of the old duty. But the case of salt is quite different; in the first place, the amount of money at stake is enormously larger, and the proportion of the possible enhancement or decrease of duty to the value of the article ex-duty is very much greater; and, in the second place, the custom of trade—at least in Calcutta, which is the principal port of importation—is such that the holders and buyers of salt at sea, when they sell or buy to arrive, are unaffected by any change which may be made in the rate of the duty before their salt arrives, and thus do not incur the loss from which it was the object of the proviso to save them.

"The grounds therefore on which this proviso is based, even if they be admitted to be just in respect of other articles, have no application to the case of salt; and there is no reason whatever why we should not, in the case of enhancement, claim for the treasury the full increase of the duty which the consumer has to pay. In fact, I may say in stronger terms that, the special conditions imposed by us upon the salt-trade being such that from the moment of the announcement of an enhancement of duty the consumer has to pay at the fully enhanced rate, we have no business to maintain an entirely exceptional provision of law by which the enhanced duty which the consumer pays goes into the pockets of some private individuals instead of into the coffers of the State.

"The first and main object of the proposed legislation is therefore to apply to the levy of duty upon sea-borne salt a more equitable system than that by which we found we were bound when we enhanced the duty in January last.

"When we alter the rate of duty on salt we can of course do nothing in respect of existing duty-paid stocks. Those who hold such stocks reap the full amount of profit when we enhance the duty; but against this they run the risk of loss when we diminish the rate. These two chances are the ordinary chances of trade, and they must be set against each other; in fact, they tend, on the whole, to the gain of the trader; for, whereas he necessarily r[illegible] full benefit when enhancement takes place, he does not sustain the fu[illegible] of diminution of duty, because the prices, as a matter of fact, tak[illegible] find their new level.

"The general rule to be aimed at in the case of salt, as in [illegible] taxed articles of consumption, is that the duty should be taken at the rate in force at the time when the trader takes the salt into his selling stock. He is not obliged to take the salt into his selling stock till he wants it for sale, and therefore he is not obliged to pay duty until the prices are such that he can realise it from the consumer. We intend by the present Bill to apply this rule generally to sea-borne salt in the same way as it is already applied to salt manufactured under license from Government.

"This same rule we at present apply, and by the present Bill continue to apply, to salt manufactured and sold by the Government in the cases in which the purchase is made at the place of manufacture.

"But it is found necessary to make a special legislative provision with reference to the system of levy of duty on salt manufactured and sold by the Government. In order to give every facility to the salt-trade a system of through-booking, as it is called, has been established, by which salt-traders, paying price and duty into any treasury of the Government, can have salt forwarded to them by the officers of Government who are in charge of the manufacture. It is an obvious necessity of this system that the duty is received by the Government at least a day or two before the salt can be delivered. Now, an announcement of change in the rate of duty, and especially of an enhancement, must, notwithstanding what is said by our critics in the public Press, be made suddenly and without any notice. This is the provision of the legislature, and it is obvious that the result of any forewarning would be that during the period of notice the salt-merchants would buy from Government all the salt they

could lay hands on; and, as prices must at once rise (as I have already explained), the consumer would have to pay the enhanced duty into the pockets of the merchants and not into the treasury. It is surprising that our critics, when they claim that any project of enhancement of salt-duty should be announced and discussed like ordinary projects of law, should fail to realise such an elementary piece of political economy.

"Now, this sudden announcement being unavoidable, it necessarily catches some of the traders between the time they have paid in their money to Government and the time they can obtain delivery of the salt.

when the duty was lowered, these traders claimed that, not the salt before the new and lower rate was in force, they should overnment a refund of the difference between the rate in force ment and that in force when they obtained the salt. But in y was enchanced, they claimed that, having paid the duty ow, they were entitled to obtain their salt as agreed upon and without any further payment. We were obliged to admit both these contradictory claims, the former of grace and from a feeling of justice, and the second because we believe it was technically a sound one. These claims, and our admission of them, were caused by the fact that there was no specific provision of law suited to the circumstances; and therefore, when merchants paid their duty into the treasury, there was no specific understanding as to the conditions under which the payment was made.

"The proposed Bill remedies this defect, and establishes an understanding in this matter on what we think is an equitable basis.

"On the one hand, in case of an enhancement, the trader may reasonably consider that when he has paid his duty the contract with Government is complete, and he is entitled to receive his salt without more ado; and that it is not through his fault, but is the result of delay in arrangements established by the Government, if he does not receive delivery of salt before the enhanced duty comes into operation.

"On the other hand, if we say that the duty is to be levied at the rate in force at the time when the money is paid into the treasury, we obviously, in the case of a diminution of the tax, place the payer at a disadvantage compared with those who have paid their money at the place of manufacture. He will feel that, if he had only arranged to pay the duty at the place of manufacture at the time he wanted the salt, instead of paying it at a distant treasury, two or three days before he wanted it, he would have obtained the benefit of the diminution.

"Now, it is to our advantage to give every facility to the salt-trade, and therefore it is not to our advantage to impose any comparative disability upon those who desire to use the system of through-booking. We therefore propose to make for this case the special provision that, if a trader pays his money into a treasury, and if within three days thereof, and before he gets his salt, the rate of duty is diminished, he will get the benefit of the diminution. With ordinary diligence on his own part he can always get his salt delivered to him at the works within three days, and therefore, if he chooses (as some salt-traders occasionally do) to pay his money into the treasury more than three days before he wants his salt, and then lies by, we give him no advantage but put him in the [illegible]ion as the merchants who have added to their selling stock before th[illegible] diminution of duty. So also we give him no advantage in respe[illegible] he actually receives before the diminution comes into effect. [illegible] has paid the duty within three days of the diminution and [illegible] salt, we consider he may fairly claim that the fact of his pa[illegible] ished rate instead of the diminished arises from his having t[illegible]ken at the rate in the terms offered by Government under the through-booking [illegible]ling stock. H[illegible] that he should be saved from any loss thereby.

"When the terms, based upon these considerations, are thus definitely laid down in the law, the trader will be able to regulate his business in accordance with them, knowing exactly what risks of loss by diminution of duty are before him, and what chance of gain by its enhancement.

"As I said when I began, the Bill must be regarded as one of perfectly general application. It is introduced for the purpose of defining more accurately the conditions of the trade with reference to the duty, and not with any intention of paving the way for any measures at present in contemplation. I am obliged, in explaining it, to make continual reference to enhancement and diminution of the salt-duty; but my references, I repeat it, are purely theoretical, and I hope in the one case, and fear in the other, that it may be a long time before the present Bill has any practical operation."

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also introduced the Bill.

The Hon'ble MR. WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

1888.] [*Sir Charles Aitchison.*]

CONTAGIOUS DISEASES ACTS REPEAL BILL.

The Hon'ble SIR CHARLES AITCHISON moved for leave to introduce a Bill to repeal certain enactments relating to Contagious Diseases. He said :—

"My Lord,—In asking leave to introduce a Bill to repeal the Indian Contagious Diseases Act of 1868 I may explain that the object is to remove from the Statute-book an Act the operation of which has been already withdrawn from all places in British India and is not likely to be again brought into force. Fortunately it is unnecessary in this connection that I should advert to the controversies which have raged round the question of Contagious Diseases Acts both here and in England; and a brief reference to the circumstances which have led to the suspension of the operation of Act XIV of 1868 will best illustrate the position which the Government of India has taken on this question so far as it affects the civil population of the country.

"Act XIV of 1868 has always had a very restricted application. Its primary object, as explained by the Hon'ble Sir Henry Maine when he moved for leave to introduce the Bill, was 'to prevent the spread of venereal disease in the maritime towns of British India, and if possible to extirpate it.' The measure was recommended by all the Local Governments which had such towns within their territories, and it was considered at the time to have become a matter of urgency through the statistics which had reached the Government concerning the condition of the seamen in those towns. In its final form, however, the Act was not limited to seaports but was made applicable to any place in India which Local Governments, with the sanction of the Governor General in Council, should specify. This change was effected mainly in consequence of the remarks of the Hon'ble Sir John Strachey, who drew attention to the results that had attended efforts to check venereal disease in the great city of Lucknow. Practically, however, the Act has been limited to the three presidency-towns, and to seaports in Burma. It has never been in force in more than nine towns in the whole of British India, nor at any time, so far as I can ascertain, in any town that is not a seaport, except Lucknow and one other town. Last year it was in operation only in Madras, Bombay and two other places; and its operation has now been entirely suspended under orders of the Government of India issued on 19th May last.

"As regards the effect of the Act opinions are somewhat divided not only among the public but among medical and statistical experts. It is admitted to have been beneficial in checking disease among the sailors in Bombay. Elsewhere

the success which has attended its application in the large towns in the whole or parts of which it has been in force is doubtful. It certainly has not had the anticipated effect of extirpating the disease, and if, as Sir Henry Maine observed, the 'sole justification for this sort of legislation was that it should be thorough,' there are few I think who could successfully maintain that the Act has justified itself. In 1880 it was found in Calcutta to be unworkable except under rules and practices which the High Court condemned. Proposals to make the law more stringent and to extend it to the suburbs were not accepted. As an alternative the application of the Act was restricted to the parts of the town frequented by soldiers and sailors, but with no better results. A committee consisting of four medical experts, with the Hon'ble B. Colvin as president was meantime appointed to investigate the whole subject; and, as the res[illegible] of their inquiries, together with a call made by the Secretary of State f[illegible] opinion on the general question of the working of the Contagious Diseases A[illegible] Government of India, in January, 1882, recommended the repeal of the Act o[illegible] ground that it did not, and with any practicable amendment could not, effect [illegible] preciable good, was unpopular, liable to abuse and costly. At that time, however, a Select Committee of the House of Commons had reported against the repeal of the English Contagious Diseases Acts or any modification of their stringency. It was therefore considered to be better to wait and not repeal the Indian Act, but the Government of India was given discretion to withdraw its operation. Accordingly the Act was suspended in Calcutta on 15th March, 1883, since which date it has not been in force there. A representation made by the Calcutta Health Society in 1887 in favour of the re-introduction of the Act met with considerable opposition, and the Government of Bengal, in submitting its views on the proposal, was of opinion that it would not suffice to put the present law in force, that it would have to be greatly strengthened and its area extended so as to include the distant suburbs, and that the Government of India would be well advised to decline to reconsider the decision arrived at in 1883.

"I need not trace at any length the history of the question as it affects Madras and Bombay. These Governments were of opinion in 1883 that it was undesirable to suspend the Act in the presidency-towns. Consequently the Act was left to its operation in the towns of Madras and Bombay. In 1887, however, the question was re-opened by the Secretary of State, to whom certain memorials had been submitted, and the result of further inquiry and consideration was the issue, as I have stated, of the orders of 19th May, 1888, suspending the operation of the Act in the towns to which at that time its operation was limited.

1888.] [*Sir Charles Aitchison.*]

"The object of the Bill which I now ask leave of the Council to introduce is to remove from the Statute-book Act XIV of 1868 and any Acts subsidiary to and dependent on it; to do, in short, what the Government of India if permitted would have done six years ago. The question as it affects cantonments is under separate consideration."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also introduced the Bill.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 8th August, 1888.

S. HARVEY JAMES,

SIMLA;
The 27th July, 1888.

Secretary to the Government of India,
Legislative Department.

G. C. Press, Simla.—No. 180 L. D.—27-7-88.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 22nd August, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble J. Westland, C.S.I.
The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.
The Hon'ble G. R. Elsmie.

SALT-DUTY BILL.

The Hon'ble MR. WESTLAND moved that the Bill to regulate the payment of duty in respect of Salt where there has been an alteration of the rate of duty payable in respect thereof be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Sir Charles Elliott, the Hon'ble Mr. Elsmie and the Mover, with instructions to report within two months.

The Motion was put and agreed to.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, and the Court-fees Act, 1870, and to make provision with respect to certain other matters. He said:—

"Under section 90 of the Probate and Administration Act, 1881, the consent of the Court by which probate or letters of administration is or are granted is required to every disposition of property made by an executor or administrator,

subject to the proviso that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

"Neither under the Indian Succession Act, section 269, nor under the Hindu Wills Act, 1870, nor under the law as applied in the case of letters of administration granted by the Presidency High Courts, was any consent of the Court required previous to the disposal of property by an executor or administrator, and the provisions to this effect in section 90 of the Probate and Administration Act, 1881, though no doubt prompted by caution, were distinctly retrogressive.

"As might have been expected, considerable difficulties have arisen from this alteration in the law. Hindus in the presidency-towns have gone on taking out probates and letters of administration in the old form for the last seven years, and they now find that many of their sales and transfers of property are liable to be called in question because the consent of the Court has not been obtained. As an illustration, let me take the simple case of Government promissory notes, which have frequently to be sold to provide funds for the payment of debts of a deceased person. The Secretary and Treasurer of the Bank of Bengal writes :—

'It is only recently that the restrictive effect of section 90 of Act V of 1881 has been realized by the Public Debt Office, and for some years past no distinction was made between the powers of European and Asiatic executors and administrators with respect to the disposal of notes belonging to the estates administered by them; and, so far as I am aware, no complaints have ever arisen from such want of distinction. The new state of things, on the contrary, is causing much dissatisfaction amongst the persons to whom the Indian Succession Act does not apply, and who are interested in questions relating to the law of succession to Government securities.'

"On referring to the records in the Legislative Department, I find that section 90 of Act V of 1881 was apparently based on a proposal of the Lieutenant-Governor of the North-Western Provinces to require 'the consent of the Judge to the sale or mortgage of immoveable property' only. The Select Committee to whom the Bill was referred went beyond this recommendation, stating it to be their opinion that the power to dispense with the necessity for consent, which it conferred on all Courts, would be sufficient to prevent any practical inconvenience. This expectation has not been realized; and I think a strong case has been made for a return to the former practice, and for legalizing intermediate transactions which have occurred since the alteration of the law in 1881.

"Theoretically, no doubt, the consent of the Court appears to be a great safeguard, but in practice it is not very much to be relied on. 'Such applications,' says a District Judge of great experience in Bengal, 'are ordinarily made on affidavit or some merely formal evidence, and no Judge can feel sure whether, in granting the application, he is permitting the executor to make a necessary sale or authorizing an act of waste. As the law stands at present, it appears to me to serve only to cause useless trouble and expense to an honest executor, and probably to protect a fraudulent executor, who might plead the sanction of the Court, if called to account for a sale improperly made.' Mr. Gould, the late Administrator General of Madras, tersely describes section 90 as a 'trap for the unwary and a stumbling-block for the wary.' And my learned friend Mr. Woodroffe, whose long experience lends great weight to his opinion on the subject, considers that the retention in the section of the words 'with the consent of the Court' and of the proviso renders litigation frequent and 'necessitates constant applications to Courts, which, being almost always *ex parte*, are but of little real protection to the beneficiaries.' The true safeguard, it seems to me, is to be found in the simple but effective process of requiring adequate security to be given, under section 78 of the Act, for the due administration of estates.

"In these circumstances it is proposed by section 7 of the Bill to substitute for section 90 of the Probate and Administration Act, 1881, a section conferring on an executor or administrator an absolute power of disposal over moveable property, but, as regards immoveable property, subjecting an executor ordinarily to such restrictions, if any, as are imposed on him by the will appointing him, and an administrator to restrictions similar to those imposed on a guardian by Acts XL of 1858 and XX of 1864. It is also proposed by section 10 of the Bill to confer on persons who have already taken out probate or letters of administration under Act V of 1881 the unrestricted powers, prospectively and retrospectively, which under the Hindu Wills Act used to be conferred, and under the Indian Succession Act are conferred, on executors and administrators.

"It is further proposed by section 10 of the Bill to remove a doubt whether section 90 of the Act of 1881 is to be construed, with respect to transfers made after the first day of April, 1881, as applying to executors and administrators to whom probates, and letters of administration with copy of the will annexed, were granted under the Hindu Wills Act, 1870, before that day.

"The other sections of the Bill are of secondary importance.

"Sections 4 and 8 will enable Courts which are not Courts of Record, and cannot punish for such contempt as is involved in the omission to submit an inventory or account, to insist in proper cases, either in the interests of the revenue or at the instance of a person interested in the administration of an estate, on the submission of such documents as Acts X of 1865 and V of 1881 now require to be submitted in all cases, without, however, making any express provision for enforcing their submission.

"Section 9 is designed to remove a doubt which has existed since the enactment of article 2 of the first schedule to the Indian Stamp Act, 1879, with respect to the stamp to which an administration-bond under the Indian Succession Act, 1865, or the Probate and Administration Act, 1881, is liable.

"Article 16 of the second schedule to the Court-fees Act, 1870, fixed the fee on an administration-bond at eight rupees; under the Stamp Act, 1879, the same duty as that payable on a security-bond, which in no case exceeds five rupees, is imposed; but the former provision was not repealed, and questions have arisen as to the Act under which the duty ought to be levied. With the consent of my hon'ble friend Mr. Westland I propose to abolish the higher rate and to fix five rupees as the maximum duty."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

SUCCESSION CERTIFICATES BILL.

The Hon'ble MR. WESTLAND moved for leave to introduce a Bill to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons. He said:—

"The present Bill has a history which goes back to 1881. In that year Mr. Pitt-Kennedy made a proposal that Act XXVII of 1860 and the Court-fees Act should be amended so as to impose upon a person taking out a certificate a fee

of two per cent. upon the entire value of the estate of the deceased. The proposal was based on these grounds—first, that the lower fee taken on certificates under Act XXVII of 1860 tempted persons to substitute the certificate procedure for the more perfect system of taking out administration; second, that the system of certificates gave an advantage to some classes of the community over others, who could proceed only by the regular system of administration; and, third, that the grant of a certificate was by large classes of the community regarded, though erroneously, as equivalent to the establishment of a representative title as against the world.

"These proposals were referred to Local Governments in April, 1881; but the weight of local authority was against giving any new character to the Certificate Act; it was considered that the mass of the people were not ripe for the imposition of a regular system of administration as a condition precedent to the realization of the deceased's debts. But it was shown that the neglect and evasion of the law which were among the grounds of Mr. Pitt-Kennedy's proposals were extremely common. Though the law nominally imposed a two per cent. duty, it practically left it quite optional with the payer whether he should pay it or not.

"First of all, a person could obtain a certificate on a valuation of Rs. 20 only, and having got it could apply it to the collection of a debt of Rs. 20,000. The Court-fees Act, indeed, laid down that the holder had to file an account after a year; but the provision was not effective, and, as a matter of a fact, was continually evaded. So also it was found that applicants occasionally pursued their cases in the Court so far as to have themselves declared entitled to a certificate, but stopped at that point in order to avoid payment of the duty required upon its actual issue. And the law itself contained an express provision against absence of certificate being considered a disqualification even in the case of a refractory debtor sued in Court; for it is provided that the Court should not admit the plea unless it considered it was founded upon a real doubt as to the title of the claimant.

"To remedy these defects in the law Major Baring introduced in this Council in March, 1883, a Bill to amend Act XXVII of 1860. The main provision of the Bill was that the certificate should be a certificate for the collection only of such debts as were specifically enumerated in it. Following out the principle that there should be no compulsory administration, the Bill was so worded that the certificate-holder was not obliged to take out a certificate for, or pay duty upon, debts which he believed he could amicably collect without one, but he

could not sue for any debt unless it was first expressly included; and of course he had a strong motive to insert, and pay duty upon, any debts regarding the collection of which he was not quite assured.

"This Bill was referred to Local Governments, and was for the most part favourably reported on. Several improvements in detail were recommended; and the only objection made to it on principle was that the certificate should be made to compulsorily include all the debts due to the estate, and even the whole estate. But, as I have already stated, the Government was not prepared to adopt the view that no powers in respect of a deceased's estate should be given which fell short of complete administration; in fact, the primary principle of the Bill was the protection of debtors and not the administration of the estate.

"While this was going on, and before the Bill of 1883 had reached the stage of reference to a Select Committee, the Government of Bengal laid before the Government of India a representation regarding the absence of any security for the due realization of the stamp-revenue both in the case of applicants for certificates and in the allied cases of applications for administration and for guardianship.

"The whole question was again submitted to local authorities, executive and judicial, and the present Bill is the outcome of such further amendments and suggestions as have received general approval. Part of these suggestions have been considered with reference to the Bill which the Hon'ble Mr. Scoble has to-day introduced.

"So far as regards the Bill relating to certificates, it will be observed that we still adhere to the voluntary principle. We have rejected proposals to include the whole of the debts of the estate, and not only those which will not be amicably paid; we have rejected proposals to attach a penalty to the non-submission of accounts, and proposals to give rewards to informers who bring to notice evasions in respect of valuation. And, although the certificate is not valid for the enforced recovery of any debt not mentioned in it, we protect any debtor who in good faith pays such a debt to the holder.

"The Bill is not a fiscal Bill in the sense of its imposing any new duties or taxes, but it will no doubt have the effect of increasing the revenue by preventing what are reported to be the very frequent evasions of the duties prescribed by the existing law.

"The form of the Bill is changed since the subject was last before the Council. In 1883 it was thought sufficient to amend the Act of 1860, but it is now thought best, considering the additional changes now proposed, to abolish the old Act and substitute an entirely new one."

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also introduced the Bill.

The Hon'ble MR. WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

CIVIL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to amend the Code of Civil Procedure and the Presidency Small Cause Courts Act, 1882. He said:—

"The purpose of this Bill is two-fold—in the first place, to make it quite clear what chapters and sections of the Code of Civil Procedure, as amended by recent legislation, apply to Presidency and Provincial Courts of Small Causes, respectively; and, secondly, to regulate the course of appeal from orders in insolvency-matters under the Code.

"Doubts have been expressed by competent authority as to the effect of Acts VI and VII of 1888 in respect of both these matters. Such doubts lead to unnecessary litigation, which it should be the object of the legislature to prevent. I therefore ask the Council to permit me to remove them by this Bill, which is a mere corollary to the earlier legislation of this year upon the subject."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the

local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 5th September, 1888.

SIMLA;
The 24th August, 1888.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

Note.—The Meeting fixed for the 8th August, 1888, was subsequently postponed to the 22nd idem.

G. C. Press, Simla.—No. 234 L. D.—24-8-88.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 5th September, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble J. Westland, C.S.I.
The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.
The Hon'ble G. R. Elsmie.

TOLLS VALIDATION BILL.

The Hon'ble MR. ELSMIE moved that the Bill to remove doubts as to the legality of the levy of certain Tolls be taken into consideration. He said:—

"My Lord, in introducing this Bill into Council on the 11th July last, I explained briefly the general scope of the measure and the reasons which had rendered legislation necessary.

"The Bill has now been published in the Gazette of India and in the local official Gazettes, while the Local Governments have been invited to express their opinions in regard to it. No adverse criticisms have been elicited and no suggestions for altering the wording of the Bill have been received. The Government of the Punjab, by whom the necessity for the proposed legislation was first pointed out, accepts the Bill in its entirety, and the other Local Governments affected by it approve of its provisions."

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that the Bill be passed.

The Motion was put and agreed to.

CONTAGIOUS DISEASES ACTS REPEAL BILL.

The Hon'ble SIR CHARLES AITCHISON moved that the Bill to repeal certain enactments relating to Contagious Diseases be taken into consideration. He said:—

"This Bill, as I explained when moving for leave to introduce it, is of a very simple character. Its object is to remove from the statute-book certain enactments relating to contagious diseases which have become inoperative. When introducing it I mentioned that the question of contagious diseases in cantonments was under separate consideration. The provisions of the law relating to cantonments are separate and different from the Acts which the Bill before us is intended to repeal. But, in order that the attitude of the Government of India to the whole question may be understood, I may perhaps be permitted here to explain in a general way that it is intended to deal with the cantonment question in a Bill to consolidate and amend the law relating to cantonments, which has been under consideration for several years past and has recently been submitted to Local Governments for their opinions. It is proposed to abandon the powers conferred by clause 7 of section 27 of the Cantonment Act of 1880, and the corresponding Acts in Madras and Bombay, and to take power to make rules to exclude from cantonments persons suffering from contagious or infectious diseases, and to organize a system of voluntary hospital relief for patients suffering from such diseases. In the meantime, pending the necessary steps preliminary to legislation, the cantonment authorities have received executive orders that the existing rules are to be so worked that there shall be no compulsory examination of women, no registration of women and no granting of licences to practise prostitution.

"The Bill was sent to Local Governments and has been published as usual in the local Gazettes."

The Hon'ble MR. ELSMIE said:—

"My Lord, Act XIV of 1868, the repeal of which is now proposed, has been on the statute-book for twenty years, but during that period, according to the best information I have been able to obtain, has never been put in force in any part of the Punjab.

"I understand, from what was stated by the Hon'ble Sir Charles Aitchison on introducing the Bill, that the provisions of this Act have been found very difficult to work and more or less ineffective in the very few towns of other provinces of India to which it has been extended.

"In these circumstances it is extremely unlikely that this law in its present form would ever be made applicable to the Punjab, the province with which I am best acquainted. So far as the Punjab is concerned, therefore, there seems to me to be no objection to the proposed measure. In saying this, however, I am anxious personally to guard against being understood as having at present been satisfied that this Act should be repealed on the ground that it belongs to a class of legislation which should be removed from the statute-book as being necessarily opposed to good policy in India."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill be passed.

The Motion was put and agreed to.

SHAN STATES BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to supplement the provisions of the Upper Burma Laws Act, 1886, with respect to the Shan States. He said:—

"Among the territories formerly governed by King Thebaw which, by the Proclamation of 1st January, 1886, were declared to have become part of Her Majesty's dominions, were several groups of Shan States, a few lying to the west of the Irrawaddy, and some beyond the Salween, but most of them occupying the great Shan plateau between those two rivers. These States, upwards of seventy in number, large and small, have an aggregate area of over 40,000 square miles, and contain a population estimated at two millions. Under the Burmese Government, their administration seems to have been left in the hands of their own Chiefs or Sawbwas, with but little interference so long as the due amount of tribute was regularly paid.

"After the fall of Mandalay, letters were sent to the Shan Chiefs telling them that the British Government did not desire to interfere with their autonomy so long as they kept the peace, paid the usual moderate tribute, and abstained from fighting with each other. Accordingly, my learned predecessor, Mr. Ilbert, in presenting the Upper Burma Laws Bill to this Council in September, 1886, remarked:—

'There is no present intention of importing British law into the Shan States, and therefore we have excluded those States from the operation of the laws which we declare in force in Upper Burma, merely reserving a power, which may possibly be useful hereafter, to introduce into any portion of those States such laws, if any, as may be required.'

"During the two years which have elapsed since this Bill became law considerable progress has been made in the settlement of the relations between the Shan States and the British Government; and the object of the measure which I now ask leave to introduce is to put these relations upon a legal basis. Its main feature is to vest the administration of civil and criminal justice and the collection of the revenue within each State in the person for the time being recognized by the Government as the Chief of the State, subject to such conditions as the Government may prescribe; and to provide that, until varied by the introduction of British law, the law to be administered in a Shan State shall be the customary law of the State in so far as that law is in accordance with justice, equity and good conscience, and the punishments which may be awarded thereunder, or the practices which are permitted thereby, are in conformity with the spirit of the law in force in the rest of British India.

"The system thus introduced carries out the traditional policy of the Government of India. When a territory has newly come under our administration, and is not ripe for the introduction of the more perfect system which prevails in our older provinces, we have not introduced it. 'To govern the people through their native Chiefs,' as Mr. Mountstuart Elphinstone well observes in his Report on the Territories conquered from the Peshwa, 'is the only one practicable plan until the gradual effects of civilization have produced their natural results. * * * 'The plan,' he adds, 'has many obvious and palpable defects, and many more will no doubt appear when its operations are fully observed. It has this advantage that it leaves unimpaired the institutions, the opinions and the feelings that have hitherto kept the community together, and that, as its fault is meddling too little, it may be gradually remedied by interfering when urgently required. * * * It makes no great changes, either real or apparent, in the laws, and it leads to no revolution in the state of property. The established practice also, though it be worse than another proposed in its room, will be less grievous to the people, who have accommodated themselves to the present defects and are scarcely aware of their existence; while every fault in a new system, and perhaps many things that are not faults, would be severely felt for the want of this adaptation.'

"Working upon the lines thus laid down by one of the wisest of Indian statesmen the Bill empowers the Local Government, with the previous sanction of the Governor General in Council,—

to appoint officers to take part in the administration of civil and criminal justice and the collection of the revenue within any Shan State into which it may be desirable to introduce British agency;

to define the powers and regulate the procedure of the officers so appointed;

to direct by what authority any jurisdiction, power or duty incident to the operation of any British law that may be introduced into the State is to be exercised or performed; and

to modify the customary law of the State in so far as, in the opinion of the Local Government, that law is not in accordance with justice, equity and good conscience, or authorises punishments, or permits practices, which are essentially repugnant to civilized ideas.

"These powers will be exercised, as regards the Shan States generally, only when the occasion for putting them in force is imperatively demonstrated; but there is a collection of petty States, called the Myelat, or middleland, between Burma proper and the Shan plateau, in regard to which, though it may not be desirable to introduce direct British administration, it is necessary to make immediate provision for the establishment of the British Government as the direct controlling authority. Under the Burmese *regime*, these petty States had a certain independence in the management of their internal affairs, but in all important matters were subject to the orders of the Government at Mandalay. Section 6 of the Bill will enable the Chief Commissioner to exercise in the Myelat the powers formerly possessed by the King of Burma; and it is hoped that by carefully regulating, watching, and as opportunity occurs improving, the existing methods of local government, he may be able to render the Myelat an example which the other Shan States may be spontaneously glad to follow."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India and in the Burma Gazette.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 12th September, 1888.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 7th September, 1888.

G. C. Press, Simla.—No. 275 L. D.—7-9-88.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 20th September, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble J. Westland, C.S.I.
The Hon'ble G. R. Elsmie.

BILL TO SUPPLEMENT BOMBAY AND CALCUTTA MUNICIPAL ACTS.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to supplement certain provisions of the City of Bombay Municipal Act, 1888, and of the Calcutta Municipal Consolidation Act, 1889. He said:—

"The Councils of His Excellency the Governor of Bombay and His Honour the Lieutenant-Governor of Bengal have recently passed Bills to consolidate and amend the law relating to the municipal affairs of the presidency-towns within their respective jurisdictions. They are Bills of great magnitude and importance,—one containing 461, and the other 528, sections,—and were adopted after very full discussion not only in the Councils themselves, but in the Press and by the municipal bodies which they more immediately concern.

"As might be expected, they have given rise to considerable diversity of opinion among the communities most directly affected by their provisions. With these matters of controversy the Bill which I ask leave to introduce has no concern. The questions raised were within the competence of the local legislatures to determine; and the Government of India has no reason to doubt that they have exercised the discretion which they admittedly possess, wisely and with a due regard to local interests and requirements.

"But there is another matter, happily not in controversy, in regard to which it has been considered necessary to give effect to the proposals of these Bills by legislation in this Council. In both Bills it is proposed to confer jurisdiction in certain municipal matters—claims to vote, objections to valuations or assessments, compensation for damage, and the like—upon Appellate Benches of Municipal authorities, Presidency and other Magistrates, and Small Cause Courts; and to make the decisions of these tribunals final in certain classes of cases. It is obviously desirable that there should be a cheap and summary way of disposing of such questions: but the local Councils have no power to pass laws which affect the jurisdiction of the High Courts as established by Acts of Parliament, or which repeal or amend Acts passed by this Council subsequently to the year 1861. The provisions of the two Bills appear to be open to question on both these grounds.

"Following the precedent of Act XXII of 1870, the Bill which I ask leave to introduce cures this defect by enacting that the provisions of the City of Bombay Municipal Act and the Calcutta Municipal Consolidation Act shall, so far as they confer jurisdiction in these municipal matters on the tribunals I have mentioned, and, as regards the decisions, orders and other proceedings of these tribunals, be as valid as if they had been passed by this Council. Other sections define the jurisdiction of the High Court at Bombay as a Court of Reference and Appeal in such cases.

"I may add that the Bill is introduced with the concurrence of the Local Governments concerned."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India, the Bombay Government Gazette and the Calcutta Gazette.

The Motion was put and agreed to.

CIVIL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to amend the Code of Civil Procedure and the Presidency Small Cause Courts Act, 1882, be taken into consideration. He said:—

"As I stated when introducing this Bill, it is merely subsidiary to recent legislation amending the Code of Civil Procedure, and is intended to make

absolutely clear, first, what sections of the Code apply to Presidency and Provincial Small Cause Courts, respectively ; and, secondly, by what Courts appeals in insolvency-matters under the Code are to be heard and determined."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Tuesday, the 2nd October, 1888.

SIMLA;
The 21st September, 1888.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

Note.—The Meeting fixed for the 12th September, 1888, was subsequently postponed to the 20th idem.

G. C. Press, Simla.—No. 321 L. D.—22-9-88.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Tuesday, the 2nd October, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*

His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland, C.S.I.

The Hon'ble G. R. Elsmie.

SOLDIERS' NECESSARIES PURCHASE ENACTMENTS REPEAL BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved for leave to introduce a Bill to repeal certain enactments relating to the purchase of regimental necessaries from soldiers. He said:—

"I may explain that under the Army Act there is a certain scale of penalties laid down for the illegal purchase of regimental necessaries from soldiers. By the Indian Act of 1867 a much lower scale of penalties has been enacted than is provided in the Army Act, and frequent representations have been made to the Government of India by the military authorities that this lower scale of penalties is insufficient for the purpose of stopping the malpractice. The object of the present Bill is to repeal the Act of 1867, in which case the Army Act and the provisions thereof would be applicable to India. I may mention that the High Court of Bombay have already expressed a doubt as to whether the Act of 1867 was not, in fact, superseded by the Army Act. But however that may be,—whether or no the Act of 1867 has been superseded,—it appears at any rate desirable to put the matter beyond all doubt by repealing the same. This it is proposed to do by passing the measure which I now beg leave to introduce. The Bill will, when passed, enable the Governor General in Council to publish a notification under section 169 of the Army

Act declaring that for the purposes of section 156 of that Act, which deals with penalties, Rs. 50 and Rs. 200 shall be deemed to be equivalent to £5 and £20, respectively, which are the penalties laid down in the Army Act."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also introduced the Bill.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

TELEGRAPH ACT, 1885, AMENDMENT BILL.

The Hon'ble SIR CHARLES ELLIOTT moved that the Bill to make an addition to the Indian Telegraph Act, 1885, be taken into consideration. He said:—

"I have to report for the information of Your Excellency's Council that since the Bill was introduced on the 25th of July it has been circulated to the Local Governments concerned, that is to say, Madras, Bombay and Bengal, and the Chief Commissioner of Burma, and has been published in the official Gazettes. There is only one very small matter on which any difference of opinion has arisen. As was pointed out at the time I introduced the Bill, its object was to amend a slight technical omission which had taken place in the drawing up of the original Act, according to which certain powers were conferred on District Magistrates. But these powers had to be exercised in the presidency-towns of Calcutta, Madras and Bombay, in which no officer bearing the title of District Magistrate exists; and it was therefore necessary to appoint some officer in his place who should exercise these powers, and the Bill has provided that the Commissioner of Police shall take the place of the District Magistrate in these presidency-towns. The only possible alternative was to appoint the Chief Presidency Magistrate, or one of the Presidency Magistrates; and it has been suggested by one of the Judges of the Bombay High Court that the Presidency Magistrate might have been a better authority. But I beg to point out that the three cases in which the interference of that authority is necessary lie in sections 16, 17 and 18 of the Act, and in all these cases the power given to the District Magistrate is an executive and not a judicial power. Thus section 16 says that the Magistrate may, in his discretion, enforce the

right of a telegraph authority to exercise certain powers which the Act confers: section 17 says that the Magistrate may insist on the compliance by a telegraph authority with a reasonable requisition for the removal of a telegraph line or post: and section 18 says that if a tree interrupts the line of wire the Magistrate has power to cause the tree to be removed and to give compensation for the value of the tree. All these powers are such as must be exercised by an officer visiting the spot, and are therefore much more suitable to be exercised by the Commissioner of Police rather than by the Presidency Magistrate, who is occupied all day long deciding cases; and the Bombay Government has on further consideration withdrawn its objection and expressed its satisfaction with the Bill. On the other question of substituting a Judge of the Court of Small Causes in place of the District Judge no suggestion has been made, and I think I can therefore recommend that your Excellency's Council should pass the Bill."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES ELLIOTT also moved that the Bill be passed.

The Motion was put and agreed to.

PUNJAB COURTS ACT, 1884, AMENDMENT BILL.

The Hon'ble MR. ELSMIE moved for leave to introduce a Bill to amend the Punjab Courts Act, 1884. He said:—

"The Bill deals chiefly with the sections of the Act which govern the law of appeal, but the opportunity has been taken, with the approval of the Local Government and the Government of India, to propose certain alterations and additions in other sections which the experience of the last four years has suggested to the Judges of the Chief Court.

"The immediate necessity of altering the law of appeal has arisen in the following way. It will be in the recollection of the Council that one of the principal features of the civil appellate system introduced into the Punjab by Act XVIII of 1884 was the constitution of Benches of two Judges at the headquarters of divisions for the purpose of dealing with civil appeals of the more important class, namely, those arising from suits other than those technically known as 'small causes'. One of the objects of this important innovation was to secure a reduction in the number of appeals to the Chief Court. The Hon'ble Mr. Barkley in asking leave to introduce the Punjab Courts Bill said that—

'the reason for proposing that these Courts should consist of two Judges was that it was

considered that this would strengthen them for appellate purposes, and allow of finality being given to their decisions passed in appeal.'

"Mr. Barkley went on to show that there was of course the drawback that more Judges would be required to do the same work, but that where two Judges concurred in reversing or modifying the decision of a subordinate Court there would be less reason for allowing a further appeal than where a single Judge of appeal had come to a different decision from that of the first Court on the same evidence. The Punjab Courts Bill therefore, as originally introduced, contemplated the appointment of a Bench of at least two Judges in each civil division, but an important modification of this arrangement was proposed by the Select Committee.

"Mr. Barkley in presenting the Report referred to this alteration as follows :—

'An important change is that the Divisional Court may consist of one or more Judges, the Bill as introduced having provided for its consisting in all cases of two Judges at least. The constitution of Appellate Courts subordinate to the Chief Court and consisting of more than one Judge is an experiment to this extent at least that we have hitherto had no experience of how such Courts may be expected to work; and, in addition to this, the sanction which has been given for the appointment of thirteen Divisional Judges would not admit of the constitution of more than six Courts of two Judges each, unless some of the Judges are appointed in addition to other duties—an arrangement which may not always be found convenient. It therefore seemed desirable to give greater elasticity to the Bill by allowing a Divisional Court to consist of one Judge if, with reference to the circumstances of the case, the Local Government thinks this expedient or necessary.'

"This proposed modification was adopted by the Council, effect being given to it by section 19 (*1*) of the Act as passed, and, as a consequence, a very important alteration of the law of appeal to the Chief Court was embodied in section 40 (*b*). In view of the appointment of Divisional Benches it had been originally intended to permit, as of right, a further appeal to the Chief Court only in suits exceeding five hundred rupees in value; but, when it was decided that Divisional Courts might, under certain circumstances, consist of one Judge only, it was also provided that a further appeal should lie to the Chief Court from the decree of a single Judge varying or reversing the decree of the Court below.

"When the Act was passed, the Government appointed seven Divisional Benches, the Commissioner of the Deraját being directed to sit as a member of a Bench in addition to the thirteen Civil Judges referred to by Mr. Barkley. The power to appoint Divisional Judges to sit singly meanwhile remained in abeyance.

"Before many months had elapsed, however, it was found that, although the new Act had, as was expected, greatly reduced the number of civil appeals to the Chief Court, the amount of work coming before the Divisional Benches was much greater than had been anticipated, and these Courts rapidly fell into hopeless arrears. This state of things led to much correspondence with the Chief Court, and eventually the Local Government, agreeing with the opinion of the learned Judges, came to the conclusion that the advantages of the Bench system were more than outweighed by the disadvantages. Section 19 (*1*) of the Act was therefore brought into operation; the Benches were dissolved and thirteen single Judges were appointed in their stead. The first result of this measure has been a considerable reduction but not a complete clearance of the arrears in the Divisional Courts. The second result,—the natural consequence of the greater number of appeals disposed of by Divisional Judges sitting singly, combined with the operation of section 40 (*b*) of the Act,—has been so large an increase in the number of further appeals for disposal by the Chief Court that it has been found quite impossible to prevent the accumulation of very heavy arrears.

"In 1887, up to the vacation, the Court consisted of four Judges,—its present permanent strength,—but from the month of November, when it was apparent that the arrears were daily increasing, the appointment of two extra Judges was sanctioned as a temporary measure, and from that time till the 15th August last the Court consisted of six Judges. Notwithstanding this fact the Judges have found themselves quite unable to reduce the pending file. Institutions have been so numerous that it has only been possible to prevent the accumulation of further arrears. For this state of things the Punjab Courts Act, as it stands, affords no remedy, and the immediate object of the Bill which I have been instructed to introduce is to relieve the block of work, to prevent its recurrence in future, and so to secure to appellants in the highest Court of the province the disposal of their cases within a reasonable time. Although this is the immediate aim of the Bill, I believe I am right in saying that, in the opinion of the Local Government, a further object will be attained, namely, a very material improvement in the principles of the Punjab civil appellate system.

"Circumstances have prevented me from studying all the provisions of the Bill in as much detail as I could have wished. I shall therefore on the present occasion merely invite the attention of the Council to what appear to me to be the chief features of the proposed law.

"Section 3 of the Bill is intended to repeal the proviso to section 8, sub-section (*1*), of the Punjab Courts Act, which declares that no decree,

sentence, decision or order of any Court not being an order within the meaning of the Code of Civil Procedure shall be reversed or modified by any Judge of the Chief Court sitting alone. A proviso of this nature has had a place in the law relating to the Chief Court ever since the constitution of that tribunal in 1866, but a similar restriction is not laid on the Judges of the High Courts. The Government of India, the Local Government and the Judges of the Chief Court, after very careful consideration, are of opinion that the proviso may now be safely withdrawn, it being of course understood that the exercise of powers by single Judges will be carefully controlled by rules to be made under the first paragraph of section 8, sub-section (*1*).

"The next important sections of the Bill are 39 and 40, which must be read in connection with the definitions contained in section 2. The Punjab Courts Act, in dealing with suits for the purpose of appeal, divides them into two classes only, namely, 'small causes' and suits other than 'small causes'. The new Bill proposes to divide suits into—

(1) small causes;

(2) land-suits—that is to say, suits relating to land as defined in the Punjab Tenancy Act;

(3) unclassed suits—that is to say, suits which are neither small causes nor land-suits.

"Under the present law District Appellate Judges are competent to dispose only of appeals in 'small cause' suits not exceeding five hundred rupees in value. It is now proposed in addition to confer on those Judges power to hear appeals in 'unclassed suits' not exceeding one hundred rupees in value. By this arrangement Divisional Judges will probably be relieved of about twenty per cent. of the appeals in 'other suits' which, at present, they alone are competent to dispose of. Section 40, proviso (ii), lays down that no further appeal shall lie in any 'unclassed suits' of value not exceeding one hundred rupees. This is an important restriction on the law of appeal as at present in force which merits careful consideration.

"Section 40 (*1*) (*a*) of the Bill corresponds with section 40 (*a*) of the Act, save that it is proposed to raise the value of suits in which unrestricted further appeal may lie from five hundred rupees to one thousand rupees; but this provision is very materially modified in the case of all 'land-suits' by section 40 (*b*), which allows, as of right, a further appeal in 'land-suits' where a Divisional Court consisting of a single Judge varies or reverses otherwise than as to costs the decree of the Court below.

1888.] [*Mr. Elsmie.*]

"The last point in the Bill to which I shall at present call attention is section 40, sub-section (*2*), which proposes to make a very considerable addition to the existing law regarding appeals on certificates granted by Divisional Courts. These 'certificate' appeals are at present provided for by section 40 (*d*) of the Act, to which section 40, sub-section (*1*) (*d*), of the Bill corresponds; but, whereas in the existing law the refusal of a Divisional Court to grant a certificate is final, it is proposed by the Bill to permit an application to the Chief Court for a certificate which a Divisional Court has declined to grant. I understand that the Judges of the Chief Court lay great stress on this proposal, and that they consider it will have a very material effect in modifying some of the existing and newly proposed restrictions on further appeals; but on the whole it is anticipated that institutions in civil appeals will be reduced by not less than thirty per cent.

"There are other provisions in the Bill which, with those I have mentioned, will require the careful attention of the Select Committee whose appointment I am about to propose and whose Report will be duly presented for consideration, but I do not think it is necessary for me to occupy the time of the Council with further remarks at present."

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also introduced the Bill.

The Hon'ble MR. ELSMIE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the Punjab Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that the Bill be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Sir Charles Aitchison, the Hon'ble Mr. Westland and the Mover, with instructions to report at the next meeting of Council.

The Motion was put and agreed to.

The Council adjourned to Friday, the 12th October, 1888.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 5th October, 1888.

G. C. Press, Simla.—No. 348 L. D.—8-10 88.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Friday, the 12th October, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble J. Westland, C.S.I.
The Hon'ble G. R. Elsmie.

BILL TO SUPPLEMENT BOMBAY AND CALCUTTA MUNICIPAL ACTS.

The Hon'ble MR. SCOBLE moved that the Bill to supplement certain provisions of the City of Bombay Municipal Act, 1888, and of the Calcutta Municipal Consolidation Act, 1889, be taken into consideration. He explained that the Bill had received the approval of the Local Governments of Bombay and Bengal and had been published in the manner directed by the Council and that he had no modification to propose.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill be passed.

The Motion was put and agreed to.

KING OF OUDH'S ESTATE BILL.

The Hon'ble MR. SCOBLE also moved for leave to introduce a Bill to make further provision for the Administration of the Estate of His late Majesty the King of Oudh. He said :—

" By Act XIX of 1887 the Governor General in Council was entrusted with the administration of the property left by His late Majesty the King of Oudh.

Of course it was necessary for the Governor General in Council to act through an Agent, and the object of the Bill which I now ask leave to introduce is to facilitate the performance by that Agent of certain ministerial acts which are necessary for the realization and distribution of the estate. The Bill therefore proposes that, subject to the control of the Governor General in Council, the Agent shall have power to dispose of any moveable or immoveable property belonging to the estate, to execute and take conveyances of immoveable property and to institute proceedings in any Court for the purpose of getting possession of such property or for the recovery of rents, or debts, due to the estate; and, as it appears that the administration of the estate will take some time, the second section of the Bill provides, in case of the departure from India, death, resignation or removal of the Agent, for the continuance to his successor of all powers and rights necessary for the uninterrupted conduct of the administration."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India and the Calcutta Gazette.

The Motion was put and agreed to.

PUNJAB COURTS ACT, 1884, AMENDMENT BILL.

The Hon'ble MR. ELSMIE presented the Report of the Select Committee on the Bill to amend the Punjab Courts Act, 1884.

CANTONMENTS BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved for leave to introduce a Bill to consolidate and amend the law relating to Cantonments. He said :—

"I may explain that the primary object of this Bill is to overcome the great and increasing difficulty which military officers experience in obtaining houses near the barracks occupied by the regiments to which they belong or other places of duty or even within the limits of cantonments. This matter of the great difficulty and inconvenience that military officers

are put to in obtaining suitable accommodation within cantonments has been repeatedly brought to the notice of the Government of India by the military authorities, and in consequence of these representations a committee was appointed by the Governor General in Council in 1884, consisting of the Secretaries in the Legislative, Military and Home Departments, the Adjutant General, the Quartermaster General and the Judge Advocate General in India, to consider and report upon the whole subject. This committee sat throughout the whole of the summer season of 1884 and submitted their report in October of that year. They stated that it was desirable to amend the existing Cantonment Act, and they explained the amendments which they considered necessary. The amendments which they proposed had reference mainly to this difficulty of officers obtaining house-accommodation, owing to the great degree of complexity and uncertainty which had gradually gathered round the rights of owners of houses in cantonments. A draft Bill was prepared on the lines indicated by this committee, but various circumstances have stood in the way of its being brought before the Council; and the Bill which I have now the honour to submit, although based on that Bill, has been drafted entirely anew by the learned Secretary in the Legislative Department.

"This matter of occupancy of cantonment houses is dealt with in Chapter V of the Bill, which, while insisting on the prior claim of military officers to occupy houses in cantonments, specially provides that the claim is not to extend to houses which are occupied as banks, or have been occupied for three years as hotels or shops, and that disputes respecting the amount of rent to be paid for houses claimed by military officers are to be settled by committees of arbitration, in which the civilian element will be predominant if houseowners so desire. Such privileges with respect to residence in cantonments, as members of the Civil Service and other civilians enjoy in some parts of India, are to cease, the only houses which are not to be subject to the prior claim of military officers being those already mentioned (that is, banks and hotels or shops) and houses owned by or under the control of railway administrations, or appropriated by the Government to the use of such officials as postmasters and telegraph-officers, whose residence in cantonments is necessary for the public convenience.

"Of the other portions of the Bill the following only appear to call for remark:—

"(*1*) *Section 2.*—It is proposed to repeal all existing Cantonment Acts in force in British India and several obsolete enactments relating to cantonments and other military matters.

"(2) *Section 3.*—The words 'officer' and 'soldier' are defined for the purposes of Chapters V and III, respectively, and the definition of the expression 'spiritous liquor' is designed to remove difficulties which have arisen in the construction of that expression in existing enactments.

"(3) *Sections 4-7.*—It is proposed that every cantonment be constituted a subdivision of the district in which it is situated, and that the Subdivisional Magistrate be called the Cantonment Magistrate.

"(4) *Section 8.*—This section vests the administration of the cantonment police in the District Superintendent under the general control and direction of the District Magistrate. Commanding officers of cantonments are to be relieved of the duty which is now unnecessarily imposed upon them of serving processes issued by the Courts for execution in cantonments.

"(5) *Sections 17-21.*—These sections give a legal status to cantonment funds and cantonment committees. The want of such a status has been a not unfrequent cause of inconvenience.

"(6) *Section 28.*—This section, which constitutes every cantonment a sub-district for the purposes of the Indian Registration Act, III of 1877, and the Cantonment Magistrate the Sub-Registrar of the sub-district, and which requires the provisions of the Transfer of Property Act, 1882, with respect to the registration of documents, to be observed in every cantonment, is designed to reduce the difficulties which now occur in the maintenance of registers of immoveable property in cantonments.

"(7) *Section 29.*—This section, following the precedent of former Acts, gives the Governor General in Council power to make rules consistent with the Act to provide for the executive control and management of cantonments, and supplements some deficiencies which have been found to exist in the powers given by the enactments now in force."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also introduced the Bill.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

MARINE ACT, 1887, AMENDMENT BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved for leave to introduce a Bill to amend the Indian Marine Act, 1887. He said:—

"This is a technical Bill of a very small character. The object of it is to enable the Governor General in Council, as occasion may require, to vary the definition of 'gazetted officer', of 'warrant officer' and of 'petty officer' in clauses (*b*), (*c*) and (*d*) of section 2, sub-section (*1*), of the Indian Marine Act, 1887, inconvenience having resulted from the present hard-and-fast rules in respect of the classification of officers in the lower grades of the Indian Marine service."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also introduced the Bill.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 18th October, 1888.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 12th October, 1888.

G. C. Press, Simla.—No. 382 L. D.—15-10 88.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 18th October, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C.
The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.
The Hon'ble J. Westland, C.S.I.
The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.
The Hon'ble G. R. Elsmie.

MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to amend the Law relating to Fraudulent Marks on Merchandise. He said:—

"I do not think much argument is needed in support of the principle of this Bill, although considerable criticism of its details may be expected and will, I hope, be afforded by the mercantile community. It is good law, as well as common sense, that no man has a right to put off his goods for sale as the goods of a rival trader, and with that object to use names, marks, letters or other indications by which he may induce purchasers to believe that the goods which he is selling are the manufacture of another person. Still less is he entitled to use marks containing a falsehood on their face, for the purpose of deceiving purchasers, and palming off upon them an article other than that which they believed they were contracting to buy.

"The same reasons which have led to the passing of the Merchandise Marks Act in England apply to this country; and the Bill which I ask leave to introduce has been framed upon the opinion of the recognized organs of the commercial classes in India. The Chairman of the Chamber of Commerce at Madras writes—'The increase in the importation of goods of foreign manufacture bearing fraudulent British trade marks points to the necessity of early legislation against

an abuse that exposes honest traders to unmerited loss and discredit.' The Committee of the Chamber of Commerce at Bombay 'would welcome prompt legislation on the lines of the English Act, alike in the interests of legitimate traders and of native consumers; the existing position affording every inducement to the direct importation of fraudulently marked foreign goods.' The Millowners Association at Bombay approve of special legislation with a view to check the practice of marking false lengths on cloth goods, and are prepared to accept the provisions of the English Act in regard to false trade descriptions. The Bengal Chamber of Commerce, while reserving their views as to details, 'approve generally of the principle of protection to honest trade upon which the Act is based'; and the Trades Association of Calcutta 'would be glad to see an Act of a similar character introduced into this country.' The Honorary Secretary of the Bengal National Chamber of Commerce writes—'The fraudulent practice that has sprung up of late of putting false marks on piecegoods is a growing evil. It results in causing material loss to the ignorant retail dealer and the buyer in this country, and tends to shake public confidence in the honesty and good faith of English traders and manufacturers, and thus deters the expansion of this branch of the trade. My Committee, therefore, fully appreciates the necessity for adopting stringent legislative action for putting down such an injurious and demoralizing practice.' The Chamber of Committee at Karáchi is of opinion that it would be sufficient to pass a short Act 'making the false stamping of lengths and the false labelling of quantities punishable,' and that 'to legislate further than this at present would be a mistake'. And the Chamber of Commerce at Rangoon 'is of opinion that it would be better to make no change in the existing law at least until some further experience has been gained of the working of the new Act in England.'

"This summary of recent correspondence shows that the great bulk of mercantile opinion in India is in favour of early legislation, and this is certainly the view of the mercantile community in Great Britain who are interested in Indian trade. It was recently stated in the House of Commons that falsely-marked goods which were precluded from shipment in British vessels were being shipped to India from foreign ports in foreign bottoms, and this statement receives singular confirmation from an article in the Austrian *Archiv für Gesetzgebung und Statistik* for June last. Discussing the probable effect of the English Merchandise Marks Act if applied to British India the writer says:—

'One of the objects aimed at by this law is to do away with foreign marks calculated to mislead as to the foreign origin of goods. From the earliest days of the existence of this law the English customs-authorities have dealt strictly and summarily with all

attempted infringements, such as marking of imports with such English words as "patented", "registered", "yard", "number", "Co.", &c. Such rigid enforcing of the new law came as a surprise even in English circles, and gave rise to a movement, headed by the London Chamber of Commerce, in favour of a less stringent enforcement of this Act, but as far as we know without success. Austro-Hungarian trade is now threatened by the proposed application of the Merchandise Marks Act to British colonies, and especially to British India, whither Austro-Hungary annually exports goods exceeding the value of 50,000,000 florins, some of which have English superscriptions, others fictitious English names of firms, simply because they are so ordered. Any hasty application of this law to British India would jeopardise our trade interests to an enormous extent; for not only do we import into that colony, but we also carry on a considerable export trade from it; besides, we have goods to the value of hundreds of thousands of gulden lying at the custom-houses there which would be in daily danger of seizure, to say nothing of the hundreds of thousands worth of goods which are on their way and doomed to meet a similar fate, since it would be impossible to send back goods made a certain specified pattern and consigned to a specified place in case of any sudden application of this law to the country, so as to alter them in accordance with the law. The situation is the more serious from the fact that Austro-Hungary manufactures goods only to order, which orders it sometimes take months to execute; from this would result further enormous losses, for the goods would probably be half manufactured, the manufacturers still fearing confiscation in case of their being completed and sent. The orderer of the goods in India would not be the loser, for he could truly plead that he never received the goods, while the manufacturer dare not make any alterations in the goods on his own responsibility, as he is bound to deliver the goods manufactured as per order. His position, therefore, is awkward and unenviable, as he is bound to lose either way. It is well then for all manufacturers to take warning of the dangers threatening their trade with British colonies in case the Merchandise Marks Act be applied as is contemplated.'

"It would be impossible to state the case of the counterfeiters with greater frankness. 'English superscriptions' and 'fictitious English names of firms' are applied to goods 'simply because they are so ordered.' I need only say, in answer to their representation that, while putting a stop to practices of this kind, the Government of India will gladly welcome the manufactures of Austro-Hungary if they come on their own merits and not under false pretences, and that the trade need not suffer by being more honestly conducted.

"There is another form of counterfeiting which, while more hypocritical, is scarcely less deceptive. Let me illustrate it by two examples. Messrs. Curtis and Harvey are well-known manufacturers of gunpowder, who pack their powder in canisters of a particular shape, upon which are placed labels printed in an old fashioned type. The canisters and labels are closely imitated, but the name of the firm is printed Cubtis and Marvey, by which ingenious device the

counterfeiter seeks to shelter himself against a prosecution or the confiscation of his goods. In like manner 'Calvert's' soap becomes 'Galbert's' soap, and similar immunity is obtained.

"A more mischievous form of fraudulent marking is defended on the ground of a so-called custom of trade. Piecegoods are made up in certain nominal lengths, which are marked sometimes on the cloth itself, sometimes on a label; but the length marked and the actual length seldom correspond. The Deputy Collector of Manbhoom, who made a local enquiry to ascertain how far piecegoods sold in the markets of the interior are really of the quantity marked upon them, reports,—

'The shopkeepers say that, unless specially questioned, they do not, while selling the goods, disclose the shortness of length and breadth. It is evident that much deception is thus practised. The generality of people regard a yard as equal to two *haths*. When a customer demands a *panchgasi* piece, wishing for a piece of 10 *haths*, a piece marked five yards but really less than five yards is handed to him. If he unsuspectingly receives it, as he frequently does, he ultimately finds that he has been cheated.'

"There is unfortunately no doubt that this is not an exceptional state of things, but that a system of selling by false lengths is widely prevalent in India. The importer knows the lengths are falsely marked. So does the wholesale merchant. So frequently does the retail dealer. The victim is the up-country customer, who, when he gets home, finds he has paid for more than he has got, and is too poor and ignorant to obtain redress.

"In this matter of short measure the blame cannot be transferred to foreign shoulders. The evidence taken before the Committee of the House of Commons in 1887 discloses the existence of a system of false marking in England for the Indian market. Shirtings marked 39 are, it is stated, very often found to run 'one, two and even more yards short of the length indicated by the figures, which figures are generally accepted to mean yards.' Hanks of yarn which should be 840 yards really contain only 720 yards, and often much less. Piecegoods are exported to India marked 50 and 6, meaning 50 inches wide and 6 yards in length, which are found to measure only 47½ inches and 5½ yards. Accordingly, a Madras merchant, writing to a Manchester manufacturer, regrets that he cannot order such goods as his correspondent offers, adding:—'There is nothing wrong with them, excepting that they are too honest both as to width and length.' Another Indian merchant writes:—'False stamping is still being extensively carried on. We saw 200 bales of grey dhoties the other day, measuring from 7½ yards to 9 yards, all stamped

10, without yards: they were stamped in this way at the special request of the buyer.' Instances of this sort might be multiplied. Indeed, the evidence of the Manchester witnesses showed clearly enough that the marks of length and width were affixed with intent to deceive, the words 'yards' and 'inches' being purposely omitted.

"Nor is it only in regard to imported goods that this fraud occurs. Local manufacturers have followed the bad example, and some of the Bombay mills are, I am sorry to say, known to be special offenders in this respect.

"In endeavouring to deal with these and other forms of fraudulent marking of goods, I have sought as far as possible to proceed upon the lines of the existing law, and to frame the new provisions of the Bill with a careful regard to the circumstances of the people of this country.

"The old Acts relating to the subject are the Penal Code and the Sea Customs Act. The former makes the forgery of a trade mark and the use of forged trade marks penal; the latter forbids the importation of goods bearing forged trade marks of manufacturers resident in the United Kingdom or British India. It is obvious that these enactments are insufficient to prevent the evils complained of. The policy of the law is now to introduce an entirely new offence which to some extent is independent of trade marks properly so called, namely, the offence of applying any false description to goods whereby purchasers may be deceived, and to extend the protection now afforded to British and Indian manufacturers to the manufacturers of all countries with which we have reciprocal relations.

"Looking at the matter in the light of facts, it appears to me that the main thing to be done is to prevent the introduction into this country of falsely marked merchandise. The simplest way of accomplishing this is by an extension of the provisions of the Sea Customs Act, VIII of 1878. And in order to prevent the dealing in such goods, when imported into or manufactured in this country, I propose certain necessary amendments in the Penal Code, and to put the use of false trade descriptions very much on the same level of criminality as the use of forged trade marks.

"The definition of trade mark in section 478 of the Indian Penal Code, as 'a mark used for denoting that goods have been made or manufactured by a particular person or at a particular time or place, or that they are of a particular quality,' though very wide, is practically insufficient. I propose to amend it so as to include 'any trade mark which is registered in the register of trade marks

kept under the Patents, Designs and Trade Marks Act, 1883, and any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable.' And I adopt the definitions of 'trade description' and 'false trade description' given in the English Act.

"Proceeding upon this basis, while retaining the existing provisions of the law in their full severity against persons who fraudulently use or counterfeit trade marks, I propose that persons dealing with goods bearing false trade marks shall escape punishment if they are able to prove that after taking reasonable precautions they had no ground to suspect the genuineness of the mark, and that they gave all the information in their power as to the source from which the goods were obtained, or that otherwise they had acted innocently in the matter. In this way it will be possible to trace the goods to the importer or manufacturer, who is the real culprit deserving punishment.

"Similar provisions are proposed in regard to false trade descriptions. Other sections provide for unintentional contravention of the law, and for the forfeiture of goods after conviction.

"The amendment of the Sea Customs Act will, however, as I have already observed, afford the most effectual remedy against the trade in fraudulently marked goods. By section 18 (*d*) of the existing Act, the importation, by sea or land, into British India of articles bearing any names, brands or marks being or purporting to be the names, brands or marks of manufacturers resident in the United Kingdom or British India, and not made by such manufacturers, is prohibited. It is proposed to amend the section by extending the prohibition to goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code, or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889; and also to goods made or produced beyond the limits of the United Kingdom and British India and having applied thereto any name or trade mark being, or purporting to be, or being a colourable imitation of, the name or trade mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India, unless—

(i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

(ii) that place and the country in which it is situated are in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark.

Of course, the successful working of these provisions of the Act will depend on the extent to which the mercantile classes co-operate with the Custom-house authorities. The difficulty is likely to be greater here than at home. The Custom-house in England still deals with many dutiable articles of vast importance to the revenue, and has a stringent system of examination and a large staff. In India the same agency has to deal with very few dutiable articles, and the examining staff is small. It is therefore provided that—

'The Governor General in Council may make, revoke and vary regulations, either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.'

"Under these regulations the rights of all parties will be safeguarded, and it is not likely that the authorities will be put in motion without sufficient cause.

"These are the principal provisions of the Bill, which I propose to submit for consideration by a Select Committee in Calcutta, and which I commend meanwhile to the careful attention of the mercantile community. I ought to add that in dealing with the provisions of the English Act I have derived much valuable assistance from a communication with which I have been favoured by Mr. Follett, Solicitor to the Commissioners of Customs in England, pointing out various particulars in which that Act has been found, in practice, to be susceptible of improvement."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

[*Mr. Scoble*] [18TH OCTOBER, 1888.]

SHAN STATES BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to supplement the provisions of the Upper Burma Laws Act, 1886, with respect to the Shan States be referred to a Select Committee consisting of the Hon'ble Sir Charles Aitchison, the Hon'ble Mr. Elsmie and the Mover, with instructions to report at the next meeting of Council

The Motion was put and agreed to.

The Council adjourned to Thursday, the 25th October, 1888.

SIMLA;
The 19th October, 1888.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

G. C. Press, Simla.—No. 400 L. D.—19-10 88.—316

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 25th October, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble J. Westland, C.S.I.

The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.

The Hon'ble G. R. Elsmie.

PUNJAB COURTS BILL.

The Hon'ble MR. ELSMIE moved that the Report of the Select Committee on the Bill to amend the Punjab Courts Act, 1884, be taken into consideration. He said:—

"The amendments which have been suggested do not affect the principles of the Bill. The Committee propose that the periods of limitation for appeals should be assimilated to those prescribed for appeals under the Punjab Tenancy and Punjab Land-revenue Acts, namely, thirty days where the appeal lies to the District Court, and sixty days and ninety days respectively where the appeal lies to the Divisional or Chief Court.

"The Committee recommend that a special period of limitation, namely, thirty days, should be prescribed for applications to the Chief Court for the revision of orders refusing applications for certificates under section 40 (*2*), and also that the Act should not come into force until the 16th November next. It is not likely that Your Excellency's Council will be inclined to take exception to any of the amendments suggested by the Select Committee. I may, therefore, pass on at once to offer a few remarks on certain criticisms of the proposed law which have come to my notice.

"It has been said that the civil appellate system introduced into the Punjab by the Act of 1884 was a harsh measure which entailed great hardship on the people by the restrictions on appeal which it imposed, and it is

argued that, if any change is to be made, it should take the form of increasing rather than of further restricting the right of appeal to the highest Court. In opposition to this view I have heard it stated that the Bill does not go far enough in the way of restricting appeals and thereby preventing the peasantry of the province from ruining themselves by the expense of unnecessarily protracted litigation. The first of these arguments no doubt mainly takes its rise from the fact that in the early days of British rule in the Punjab very great liberty of appeal was permitted in civil cases. During the last 22 years that liberty has by degrees been considerably curtailed, but its tradition remains, and every fresh restriction has not been welcomed by the legal practitioners—a body which was virtually non-existent in the Punjab a quarter of a century ago but which has now become numerous. My own personal experience extends from the year 1858, and I can remember that until the establishment of the Chief Court in 1866 the pettiest decree in a small cause case could be appealed both on facts and law, first, from an Assistant Commissioner to the Deputy Commissioner, then from the Deputy Commissioner to the Commissioner of the division, and, lastly, from the Commissioner to the Judicial Commissioner sitting at Lahore. I have still a vivid recollection of a suit for the division of some seventy or eighty rupees on account of priests' fees brought by certain Brahmans against their rival co-sharers, which cost me considerable trouble to decide, and which excited so much party feeling that it was carried by the litigants themselves, without the aid of lawyers, through the various Appellate Courts I have mentioned, to the Judicial Commissioner. The justification of this liberal system of appeal lay in the inexperience of subordinate Courts, both original and appellate. When I arrived at my first station I had never been in a Civil Court in my life, but my Deputy Commissioner told me that I must immediately prepare to decide about a hundred civil suits a month, as there was no one else to dispose of them. Two or three days were given me to look through the records of cases decided by my predecessor and to study Sir Richard Temple's *Punjab Civil Code*, and I was then ordered to set to work and to make the best of it. In many instances Appellate Judges had to begin without much greater experience. Military officers were appointed direct from their regiments to be Deputy Commissioners, and Civilians from the North-Western Provinces, who had never tried civil suits, either original or appellate, were appointed to be Deputy Commissioners and Commissioners in the Punjab, and were required to dispose of the work of Civil Courts, to which they had been previously unaccustomed. At this period the description of the appellate system quoted in this Council by the Hon'ble Mr. Ilbert, namely, that it was 'a sifting of cases through a succession

of bad Courts in the hope that they will come right in the end', was perhaps not altogether inappropriate, and it is easy to understand how the people of the country became thoroughly accustomed to the system of three appeals,—first, to the head of the district; secondly, to the head of the division; thirdly, to the Judicial Commissioner at the provincial head-quarters,—and have been somewhat unwilling to part with a privilege which they valued.

"Improvement in the work of the Courts however rapidly took place, and soon after the constitution of the Chief Court in 1866 it was found possible to extend, with certain modifications, the appellate provisions of the Indian Civil Procedure Code to the Punjab. From that time until the passing of the Punjab Courts Act of 1884 second appeals to the Chief Court were allowed on points of law and custom where a District or Divisional Appellate Judge confirmed the orders of the Courts below, while further appeals on law and fact were permitted where subordinate Appellate Courts varied the decrees of the original Courts.

"This system was eventually superseded by the Act of 1884—a measure based upon lines suggested by the Government of India and which were fully discussed in the correspondence and in the debates of this Council.

"I have already shown in the remarks made by me on the 2nd instant the reasons which, in the opinion of Government, have made the further amendment of the Punjab system imperative; but I think it may be useful if, in reply to critics who think too much is being done in the way of restriction, I attempt to show what will be the actual difference if this Bill is passed between the civil appellate system in the Punjab and that existing in the regulation provinces.

"In regard to small cause suits not exceeding five hundred rupees in value and in regard to all suits exceeding five thousand rupees in value the law of appeal will be precisely the same in both territories. In all suits from one thousand rupees to five thousand rupees in value, and in all suits relating to agricultural land where a first Appellate Court has varied the original decree otherwise than as to costs, the law of appeal in the Punjab will be far more liberal than in the North-Western Provinces. In these cases a second appeal on law and facts will be allowed to the Chief Court in the Punjab; whereas in provinces where the Civil Procedure Code is in force the limited second appeal on points of law only is allowed. In regard to these cases then, in the Punjab, it would obviously be impossible to make greater concessions to the advocates of free appeal, and the apology, if any, is due to the critics who cannot see why Punjab litigants should have greater freedom of appeal than litigants in other provinces.

"The answer given to this objection is contained in the Government of India, Home Department, despatch No. 1461, dated 10th September, 1882, an answer which has been emphatically accepted more than once by the Chief Court and the Government of the Punjab, namely, that 'no appeal can be satisfactory in which the upper Court is unable to go into the whole case.'

"In regard to small causes ranging in value from five hundred to one thousand rupees, and to all other suits save land-suits in which the first Appellate Court varies the original decree, certain restrictions, not without compensating qualifications however, will be found in the Punjab system. In cases of this description a second appeal on points of law only is allowed in the regulation provinces, but in the Punjab no second appeal will ordinarily be allowed unless the first Appellate Court shall certify that a question of law or custom is involved and that the case is of sufficient importance to justify a further appeal. In the event of the first Appellate Court declining to grant such certificate, the Chief Court may nevertheless admit an appeal and proceed to deal with the whole case. Now it is clear that, in all cases in which an appeal on certificate is allowed, the Punjab appellant has a much wider field than an appellant under the ordinary Civil Procedure Code; and it is only in the cases in which a Divisional Judge and the Chief Court hold that no point of law or custom or of general interest is involved, and that the case is not important, that further appeal will be denied. This being so, I think it will be difficult, speaking generally, to maintain the position that in the classes of suits with which I am now dealing the right of appeal in the Punjab will be more restricted than in regulation provinces. May it not be argued that the 'complete justice' which the Chief Court will be able to administer in certificate appeals taken as a whole may equal or more than equal the limited justice which the High Courts can at present dispense in second appeals in these cases? In connection with this matter I have the express authority of His Honour the Lieutenant-Governor to state on his behalf that he would be strongly opposed to the extension to the Punjab of the Civil Procedure Code system of second appeals on points of law in all suits other than small causes not exceeding five hundred rupees in value. Sir James Lyall believes that this system has been much abused in other parts of India, so much so that high authorities have proposed to abolish it, and His Honour is certain that it would be greatly abused in the Punjab, where it would lead to the institution of a vast number of infructuous appeals ruinous to the appellant and profitable only to legal practitioners and to the stamp-revenue. The requisites of the case are, Sir James Lyalls thinks, amply met by the certificate appeal on points of law and custom allowed by the Punjab Act, and sub-section (*2*) of section 40 of the present Bill

much strengthens the power of the Chief Court in this direction by giving power to revise an order refusing a certificate. In all other respects the Lieutenant-Governor considers that the existing Punjab law, instead of being more stringent, allows a far greater license of appeal and will do so also when amended by the present Bill, and he thinks that the restrictive amendments now proposed are so moderate and so much required for other reasons besides those of a financial nature that they may be safely passed without delay.

"There is, however, one description of suits in which in my own opinion the Punjab litigant will certainly be worse off than his North-West brother, and these are the 'unclassed suits' not exceeding one hundred rupees in value. In such cases a second appeal on points of law is allowed in the regulation provinces. In the Punjab under the Bill no second appeal of any kind will be permitted. I confess that this provision in the proposed law hardly commends itself to my personal judgment, and I should have been glad had it been deemed practicable to allow a certificate appeal in these cases. The Chief Court and the Local Government are, however, of opinion that the proposed restriction may safely be imposed. The Lieutenant-Governor considers that a law which takes litigants to a distance from their homes and encourages them to institute further appeals in suits of small value up to the highest Court of the province, where lawyers' fees are of course heavy, is a law which on the whole does much more harm than good.

"Before I conclude I am anxious to say a word or two in regard to the Punjab law of revision in civil cases as contained in sections 70 and 71 of the Punjab Courts Act. It is asserted by critics that this law as compared with the revision law in other provinces is, by reason of its narrowness, little better than a farce, while the fact that full appeal stamps are chargeable on applications for revision presses very hardly on poor litigants. The first objection may be satisfactorily met by a reference to a recent judgment of the Privy Council *Rájá Amir Hasan Khan* v. *Sheo Baksh Singh* (L. R. 11. A. 237)—which has virtually limited the civil revision law for India to that which was introduced into the Punjab in 1884. In regard to the second objection I think there need be no hesitation in exacting the full stamp in a province where applications for revision are still so recklessly made that the Chief Court finds it necessary to reject 88 per cent. of them *in limine*. If we could ensure that applications for revision should only be presented upon the advice of good counsel who would dissuade their clients from persevering in hopeless cases where no shadow of a legal ground for revision exists, there might be little hesitation in reducing the stamp;

but so long as ignorant litigants insist upon venturing a last stake in what they regard as a judicial lottery, and so long as they are encouraged in this course by some unscrupulous legal practitioners, who must surely be aware of the futility of the attempt, the question seems to be not whether the existing stamp restrictions on applications for revision should be relaxed, but whether they should not be increased.

"On the general question of revision I may say that for myself I look forward with hope to a time when in the Punjab as well as in other parts of India it may be possible to act on the suggestion of the present Chief Justice of Bengal, referred to by the Hon'ble Mr. Scoble in a speech made in this Council on the 10th March last, namely, to do away with second appeals altogether and to substitute for them a right of application to the High Court in all cases in which it could be shown that a failure of justice had taken place. *Primâ facie*, I am strongly in favour of a system which would give the highest Court complete power of interference in every case, but which would expect the Judges to refuse to correct minor and technical errors of the lower Courts where substantial justice has been done."

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that in the second proviso to section 40, sub-section (*1*), of the new Chapter to be substituted for Chapter IV of Act XVIII of 1884 by section 5 of the Bill, the words "not amounting to one thousand rupees or upwards" be substituted for the words "not exceeding one thousand rupees".

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that in section 43 of the new Chapter to be substituted for Chapter IV of Act XVIII of 1884 by section 5 of the Bill, after the figures "40" in the third line of sub-section (*1*), the words "and for an appeal from an order from which an appeal lies", and after the word "decree" in the fourth line of the same sub-section, the words "or order", be added.

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that in section 44 of the new Chapter to be substituted for Chapter IV of Act XVIII of 1884 by section 5 of the Bill, the words "is one thousand rupees or upwards" be substituted for the words "exceeds one thousand rupees".

The Motion was put and agreed to.

The Hon'ble MR. ELSMIE also moved that the Bill, as amended, be passed.

The Hon'ble MR. SCOBLE said :—

"Before this Motion is put I should like to say a few words with reference to one objection to the proposed legislation to which my hon'ble friend Mr. Elsmie has not adverted. It is said that this Bill is being hurried through Council. It is no doubt true that it was introduced only three weeks ago, and that this is a shorter time than is usually allowed for measures of such importance. But the quick passage of a Bill through Council by no means implies hasty legislation. It certainly does not in this case : the time spent in discussing and settling the details of the Bill has been long, though the interval between its introduction and its enactment may be short. The subject-matter of the Bill has been under consideration in the Punjab for years. An attempt was made to settle the question in 1884, when an Act was passed to amend the law relating to the Courts in this Province. The system prevailing at that time with regard to appeals was of the happy-go-lucky character described by my hon'ble friend, and loudly called for the amendments of the law then introduced. As my hon'ble friend has told us, the attempt made in the Act of 1884 to remedy the evil has not succeeded, and those responsible for the administration of the law have had to devise other means for dealing with the congestion of appellate business in the Courts. Last year it was hoped that the appointment of two additional Judges to the Chief Court would bring relief; but no such result has followed. The arrears show no sign of diminution in spite of the labours of the increased numbers of the Bench. The question is not a question of expense, but a question of obviating delays which, in many cases, are tantamount to a denial of justice.

"I cannot better describe the existing state of things than by quoting what was said on the same subject by my hon'ble friend Mr. Ilbert in 1884. 'It must be borne in mind,' he said, 'that the great mass of the cases which come before the Court—a large proportion I believe of those which under the existing system find their way up to the Chief Court—are of the most petty and simple description, involving no important question of law or custom whatever, and requiring for their disposal nothing more than a little commonsense and patience. Having regard to the means at our disposal, are we justified in allowing the time of the most expensive Courts to be occupied with cases of this description? As has been often said, no man has a right to unlimited draughts on judicial time and judicial power. To grant an unlimited

right of appeal is not fair to the general taxpayer, and is a cruel kindness to the suitor himself. I am told by those on whose authority I am entitled to rely that among many classes in the Punjab it is a point of honour to prosecute an appeal, however hopeless may be the case and however trifling may be the stake, to the utmost, and notwithstanding the knowledge that, even if the appeal is successful, the costs to be paid will far outweigh the stakes. The unsuccessful suitor feels himself disgraced if he does not carry his appeal as far as the law will allow him to go, and it is not until recently that he has, with the help of his legal advisers, found out how very far that is. If the law would, in such cases, interpose a friendly obstacle to his further progress in the path of appeal, his honour would be satisfied and his pocket would be benefited. I hold then that we are justified, both in the interest of the general taxpayer and in the interest of the particular suitor, in placing some limitation on the right of second appeal, and that this limitation may reasonably be framed with reference both to the nature of the suit and to the value of its subject-matter.'

"It will thus be seen that, in the Bill now before the Council, we are taking no new departure, but are merely carrying out principles which were laid down four years ago as not only right in themselves but appropriate to the circumstances of the Province. The measure comes before us, moreover, stamped with the approval of the executive Government and of the Judges of the Chief Court of the Punjab. The further limitation of appeals which it proposes is not unreasonable. While petty cases are left to be decided by the tribunals of first instance, a clear distinction is maintained between suits relating to land and other suits, and greater latitude is allowed in cases of the former class, which involve stronger feelings, and as to which the decision of a single Court might not be accepted as satisfactory. In other cases the value of the subject-matter becomes the test; and, in order to secure that all really important cases may find their way up to the Chief Court, it is provided that an appeal to that tribunal shall lie, not only upon the certificate of a Judge of the Divisional Court that there is a question of law or custom involved, and that the case is of sufficient importance, in his opinion, to justify a further appeal, but also when such a certificate has been refused, if the Chief Court is of opinion, upon an application made by one of the parties, that a further appeal ought to be allowed. These proposals are the result of careful thought and large experience; and the concurrence of opinion of both the executive and judicial authorities of the Province may surely be accepted as a guarantee that this is no hastily devised scheme for the relief of the Exchequer but a well-matured effort to improve and facilitate the administration of justcie.

1888.] [*Mr. Scoble.*]

"As His Honour the Lieutenant-Governor is unable to be present to-day, I venture to quote a few paragraphs from a letter which he has addressed to the Government of India with reference to this Bill:—

'Though, no doubt,' he writes, 'the present Bill has been brought forward as an urgent measure because it has been found that even a Chief Court of six Judges is unable to cope with the appellate work imposed on it by the law of appeal as it stands, yet personally Sir James Lyall would have been unwilling to recommend legislation to restrict appeals from financial reasons only. It is mainly because His Honour is himself convinced that the law as it stands allows a license of appeal which is unnecessary, and on the whole injurious to the people, that he has recommended the amendment of the law; and he is aware that this view is shared by some at least of the Judges and by many experienced officers of the Punjab Commission And among the peasants who form the great bulk of the population of the province it is a common saying that they are being ruined by the length of litigation and by the inordinate cost of legal practitioners' fees.'

"Speaking for myself, I entirely agree with His Honour that the curtailment of appeals will not only relieve the congestion of the Courts but promote the prosperity of the people. It is no doubt satisfactory to find that the Punjabi cultivator is turning his sword into a reaping-hook and his spear into a ploughshare, but the satisfaction is lessened by the discovery that he has only changed the arena of conflict, and that, instead of meeting his enemy in the battle-field, he encounters him in the Law Courts. The passion for litigation is not unnatural, and may be in some degree commendable; but, if left unchecked, it conduces mainly to the benefit of the *vakil* and the *sahukar*—two classes whose growth in influence is not an unmixed advantage to the community at large. The nice adjustment of a boundary is dearly purchased at the expense of mortgages on both the conterminous properties; and it is scarcely worth while to fix whole families or localities in the grip of the usurer in order to establish a custom which would probably be 'more honoured in the breach than in the observance.' To the speculative or vindictive mind there is a pleasure in pursuing an antagonist from Court to Court and taking advantage of what is called 'the glorious uncertainty of the law'; but my experience has satisfied me that appeals are more favoured by lawyers than by litigants, and that many a suitor would be content with the judgment of the original Court if his legal adviser did not lure him with the bait of possible success in the Court above. Such advice is very apt to be given on very insufficient grounds, and to be attended with very disastrous consequences to all but the giver. If one of the effects of the Bill is to relieve legal practitioners from this temptation and to make them more careful in their conduct of suits in the original Courts, an immense advantage will be gained.

"For these reasons I support the Motion of my hon'ble friend that this Bill be now passed."

The Motion was put and agreed to.

KING OF OUDH'S ESTATE BILL.

The Hon'ble MR. SCOBLE moved that the Bill to make further provision for the administration of the estate of His late Majesty the King of Oudh be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill be passed.

The Motion was put and agreed to.

SHAN STATES BILL.

The Hon'ble MR. SCOBLE presented the Report of the Select Committee on the Bill to supplement the provisions of the Upper Burma Laws Act, 1886, with respect to the Shan States, and applied to His Excellency the President to suspend the Rules for the Conduct of Business.

His Excellency THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. SCOBLE moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed. He said :—

"The amendments which the Select Committee has made in the Bill have been made on the recommendation of the Chief Commissioner. Sir Charles Crosthwaite advises, in the first place, that the whole Act should come into force on such date as the Chief Commissioner may prescribe, in order that he may have time to frame the necessary rules and orders for the conduct of the administration in the various States. Secondly, he submits that, as there are many Shan States, and there may be frequent changes in the personality of the Chiefs, it would be very inconvenient if it were necessary to report every change of administration (however insignificant) in any State for the approval of the

Government of India, and if every officer appointed to a share in such administration were debarred from exercising his powers until such approval had been signified. In the third place, he suggests that it is desirable to give power to the Chief Commissioner to declare that certain cases or classes of cases, either civil or criminal, as, for instance, cases in which soldiers of Her Majesty's Forces or European British subjects are concerned, should be tried by British officials and not by the Sawbwas or their deputies. Fourthly, he thinks it necessary that the Superintendent of the Shan States should have power to withdraw particular cases from the jurisdiction of a chief and to deal with them himself or by one of his subordinates, and that he should also have authority to modify or annul orders or sentences which he considers contrary to justice or to the spirit of the law in force in the rest of British India. And, finally, he suggests that cases may arise in which it may be incumbent on the Government to undertake temporarily the entire administration of a Shan State, and that this contingency should be provided for.

"The Select Committee considered these proposals reasonable and judicious, and the Bill has been recast so as to carry them into effect. They involve no change of principle in the Bill as introduced, and I hope they will meet with acceptance by the Council, as it is important to bring the Act into operation without unnecessary delay."

The Motion was put and agreed to.

RAILWAYS BILL.

The Hon'ble MR. SCOBLE also moved for leave to introduce a Bill to consolidate, amend and add to the law relating to Railways in India. He said:—

"It is now just four years since my hon'ble friend Sir Theodore Hope obtained leave to introduce a Bill to amend and consolidate the railway law of India, explaining that the provisions of his proposed measure were only in rough draft, and would need to be referred to Local Governments, Chambers of Commerce and Railway Administrations throughout India before its introduction into Council. The period that has since elapsed, though undoubtedly long, has not been altogether unprofitably spent, for it has enabled those charged with the preparation of the Bill which I now submit to avail themselves not only of the criticism to which my hon'ble friend referred, but also of recent discussions and legislation in England, and of the practical experience of the Railway Conference which assembled during the present season at Simla.

"When the first Indian Railway Act was passed in 1854, only 20 miles of railway had been opened in this country. Twenty-five years later, when the consolidating Act of 1879 was passed, there were 8,216 miles of open line and 48 junctions. There are now 14,191 miles of open line and 118 junction stations. A traveller can now book through north to south from Kila Abdulla in Baluchistan to Tuticorin, a distance of 3,033 miles; or west to east from Karáchi to Darjeeling, a distance of 2,397 miles; while the passenger landing from Europe at Bombay will next year have the choice of four alternative lines to Agra, two to Madras, and two to Calcutta. The number of separate lines has increased from 26 in 1879 to 50 in 1888. The capital expended on Indian railways has grown from 131 millions in 1879 to over 183 millions sterling in 1887; the number of passengers carried has swelled from 44,261,227 in 1879 to 96,082,121 in 1887; the aggregate tonnage moved amounted last year to 20,195,677 tons as compared with 8,773,739 tons in 1879; and the gross receipts have risen from £11,952,590 in 1879 to £18,450,622 in 1887.

"This vigorous expansion of business, developed by the establishment of through routes and (in some cases) of competing lines, renders it necessary to adapt the railway law of India to the new condition of things. Statutory provisions which worked well enough when each railway had its own field of operation prove insufficient when competing interests come into play; and facilities for through booking raise questions between railway administrations which could scarcely arise when each was practically the master of its own traffic. Further difficulties spring from the relation of the State to railway enterprise—a relation which it is desirable to regulate by legislation, so as to establish a clear distinction between the State as a railway proprietor and as the guardian of the interests of the community at large.

"Existing railways in India may be arranged in five classes:—

(1) State lines worked by Companies, with a mileage of 4,762 miles and a capital expenditure of £62,415,925;

(2) State lines worked by Government, with a mileage of 4,059 miles and a capital expenditure of £49,820,168;

(3) lines worked by Guaranteed Companies, with 4,144 miles open and a capital expenditure of £61,712,358;

(4) lines worked by Assisted Companies, with a mileage of 543 miles and a capital expenditure of £3,722,515; and

(5) lines owned by Native States, with a mileage of 791 miles and a capital expenditure of £5,208,300.

"It is necessary to bear these figures in mind in order to realize the immense interest which the Government of India, as proprietor or partner or guarantor, has in the entire railway system of the country.

"The power of the Government of India in regard to some of these railways is limited, to a greater or less extent, by the contracts made with the various Companies by which the railways have been constructed or are worked. In framing the present Bill care has been taken to maintain the provisions of these contracts so far as they are consistent with a due regard to the public interest.

"The Bill is a Bill of consolidation and amendment. So far as it consolidates, the existing law has been reproduced. Minor amendments are sufficiently noticed in the Statement of Objects and Reasons annexed to the Bill. I need only now refer to those of greater importance.

"These will be found principally in Chapter V, and are aimed at securing proper and impartial facilities for traffic. Under contract and otherwise the Government has power to fix maximum and minimum rates and fares for the carriage of passengers and goods, and Railway Administrations are allowed to alter their charges, within the prescribed maxima and minima, so as to suit the varying conditions under which their business is caried on. But although Government, in the exercise of a wise discretion, ordinarily abstains from direct interference with rates, there are certain ruling principles with which it is bound, on behalf of the public who use the railways, to require compliance. There should be no undue preference; in other words, Railway Administrations ought not to be permitted to make preferential bargains with particular customers, such as granting them scales of charges more or less favourable than those granted to the public generally. Again, in cases where the traffic offering is sufficient to justify this arrangement, Railway Administrations ought to give reasonable facilities for public traffic between any two railway stations, each Administration being contented to receive for its share of the through rate less than its ordinary local rate. The justice of this is evident when it is considered that all traffic can be carried for long distances at lower rates than for short distances; so that, if each Railway Administration were to charge its full

local rate over its own comparatively short length of line, the aggregate would be so great as to restrict the traffic. Sir Bradford Leslie has laid down the true principle in the following words :—

'The various railway systems should, as far as possible, serve the country as if they were under one management, and the dealer in country produce should not be hampered in his operations by the necessity to base his calculations on as many different scales of rates as there may be railways between the starting point and destination.'

"These reasonable advantages are secured to the British public by the Railway and Canal Traffic Acts. Closely following the law in England, the Bill imposes on Railway Administrations the general duty of arranging to receive, forward and deliver traffic without unreasonable delay and without partiality or undue preference, and the special duty of so treating through traffic at through rates. If the Governor General in Council is satisfied that any person has just ground of complaint against a Railway Administration for breach of either duty, he may refer the case to a Railway Commission for decision. Such a Commission is to be appointed only when there are cases to be referred to it, and it will be deemed to be dissolved as soon as it has decided those cases. It is to consist of a Law Commissioner, who is to be a Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882, in the place where the Governor General in Council has ordered the Commission to sit, and of two Lay Commissioners, of whom one must be an expert in railway business, and one may be a representative of the mercantile community or any other person whom the Governor General in Council sees fit to appoint. The Commission so constituted may in any case referred to it make any order, by way of injunction, which may in the circumstances appear to the Commissioners to be suitable. If two of the Commissioners concur upon a question of fact, their decision on that question is to be conclusive. From other decisions of the Commissioners an appeal will lie to a bench of not less than three Judges of the High Court of which the Law Commissioner was a member or, from a decision of a Railway Commission in Burma, to such a bench of the High Court of Judicature at Fort William in Bengal. Orders made by a Railway Commission are to be enforced by the High Court of which the Law Commissioner was a member as if they were orders made by the High Court in the exercise of its original civil jurisdiction.

"In thus fixing the constitution and powers of the Railway Commission, and making it a temporary instead of a permanent tribunal, regard has been had to the fact that the existence of such a tribunal in England has had a most potent

effect in inducing railway managers to come to a reasonable understanding on points of difference; and it is hoped that similar results will be attained in this country.

"Chapter VII relates to the responsibility of railway administrations as carriers, and follows the rule embodied in section 10 of the Indian Railway Act, 1879. There have been very few complaints against the practical operation of this rule, which is based upon a judgment of the Bombay High Court reported at I. L. R. 3 Bom. 109; and, though the soundness of that judgment has been questioned, the Government of India, as at present advised, is of opinion that experience does not justify any material modification of existing legislation. But as a railway is defined in the Bill to include all 'ships and boats which are used on rivers and other inland waters for the purposes of the traffic of a railway and which are under the direct control of the authority administering the railway', and as, under this definition, a through rate may cover water as well as land carriage, it would seem only equitable to place Inland Navigation Companies on the same footing as to responsibility with Railway Administrations; and I shall be glad to have the opinion of the mercantile community upon this point.

"It may be convenient, in connection with this question of responsibility, to refer to a proposal to give railway receipts the same effect as bills of lading. This proposal has not been adopted. The two classes of documents stand upon an entirely different footing. The principle upon which the negotiability of bills of lading is based, namely, that for a long period the goods, and the captain in charge of them, cannot be communicated with, does not apply to railway carriage with telegraphic communication. Indeed, it may be doubted whether, in these days of quick voyages, the law as to bills of lading would ever have come into force. If the law were altered so as to place railway receipts on the same footing as bills of lading, and a statutory form of delivery order were prescribed under which Railway Administrations were subjected to the same responsibilities as shipowners, they would become liable for the proper delivery of the goods to the party entitled under the order, whether as endorsee or otherwise. As a consequence of this the railway company would have to take into consideration questions as to irregular and forged endorsements, and, in the event of goods being delivered even to an innocent holder for value when a previous endorsee's signature had been forged, the company would be liable to the right holder whose signature was forged for the goods so delivered. In addition to this, further inconvenience would arise in connection with the exercise by an unpaid consignor of his right of stoppage *in transitu*. At present, when a consignor and

consignee stand in the relation of unpaid seller and buyer, and before the delivery of the goods the consignor finds out that the consignee is insolvent, the former has a right to stop the delivery of the goods to the consignee; but in the case of a bill of lading the consignor cannot stop the goods *in transitu* if the consignee has parted with the bill of lading and it has passed into the hands of a *bonâ fide* holder for valuable consideration. It follows that, if railway receipts were turned into bills of lading, questions of the good faith, and so forth, of the holder would have to be considered when an unpaid consignor attempted to stop goods *in transitu.*

"These are among the inconveniences which would result from the adoption of the proposal, and the Government of India has not deemed it advisable to impose this additional risk and responsibility on the railways in the absence of similar legislation on the subject in England.

"Returning now to the provisions of the Bill, I may advert to the sections which relate to the comfort and convenience of passengers. Sections 63 and 98 are intended to prevent and punish overcrowding; section 64 requires that in every passenger train at least one compartment of the lowest class shall be reserved for the exclusive use of females; and section 118 provides for the punishment of male intruders into carriages, compartments or rooms so reserved. Beyond laying down general rules of this kind it has been considered undesirable that legislation should interfere with the arrangements which an enlightened self-interest is usually sufficient to lead the railway authorities to make for the benefit of their customers. Exaggerated ideas appear to be entertained in some quarters as to the duty of Railway Administrations in this respect, especially as regards the lower classes of passengers. It is no doubt true that these numbered last year 93,445,906, or rather more than 97 per cent. of the total number carried. But, as each travelled an average of only 41 miles, and paid an average fare of 8 annas and 1 pie, it seems clear (apart from sanitary and caste considerations) that bathrooms and latrines need not, and could not economically, be provided in third and fourth class carriages. Lower class earnings, large as they are, are less easily gained than the others; and the accommodation furnished must vary in relation to the fare paid and the distance travelled.

"Two other provisions of the Bill require notice. Section 131 deals with the question of the taxation of railways by municipal committees, cantonment committees, district boards and other like authorities. In the opinion of the Government of India the exemption which guaranteed and State railways enjoy in

some provinces from assessment to local rates on land should be extended to all railways throughout India. As regards municipal taxes, it is considered that such as have been levied hitherto in any municipality or cantonment may generally continue to be levied there, though possibly in a commuted form.

"The other provision relates to the representation of railway administrations in proceedings before Courts of Justice, especially in criminal cases. There have been instances of subordinate Courts objecting to the manager of a State railway appearing before them by deputy, even where the attendance of the representative of the railway is required for purely formal purposes. There have also been many instances of great and unnecessary expense being imposed on railway administrations by reason of subordinate Courts refusing to allow petty prosecutions to be conducted by railway servants. Section 141 of the Bill accordingly authorizes the manager or agent of a railway to depute a subordinate officer or other competent person to act for or represent him, when necessary, in any Court.

"These are the principal enactments of the Bill, so far as it amends or adds to the existing law. In framing it especial care has been taken not to go in any case beyond recognized railway practice at home. I hope it will be found that, while duly solicitous for the public interest, a proper regard has been paid to the rights secured by contract to the pioneers of railway enterprize in India, and that the guaranteed companies, no less than the mercantile community and the public generally, will accept this Bill as a fair solution of difficulties which might become formidable if they were not honestly and promptly dealt with."

The Hon'ble SIR CHARLES ELLIOTT said :—"I wish to add a few remarks to those which have fallen from my hon'ble friend Mr. Scoble in introducing this Bill, chiefly in order to express my concurrence in what he has said and my belief that the Bill, when it is passed with such amendments as shall seem good to Your Excellency's Council, will be of material advantage to the interests of the great railway systems which will be affected by it, both as to their relations to each other and as regards the wants and requirements of the public which they serve.

"There are also a few points respecting which I should like to enlarge on what my hon'ble friend has said, or which have not been noticed by him but seem to me to deserve prominent attention.

" The most important portion of the Bill is, as Mr. Scoble has already said, Chapter V, dealing with the creation of a Railway Commission. We have already, since the Bill was drafted and published, received communications, both in writing, and also verbally from the delegates who assembled here last month, which throw an important light on the proposals made in this chapter and which deserve the careful attention of the legislature. The chapter empowers the Railway Commissioners to decide certain classes of dispute which arise between railway companies; and these disputes relate principally to through rates on goods. Now, it is contended by some of the older guaranteed companies that their contracts with Government confer on them an absolute power of fixing and altering the rates they charge, subject only to the limits of maxima and minima which Government has prescribed, and a fear has been expressed lest the appointment of a Railway Commission should prove to be an undue interference with their rights. I fully accept the justice of their contention, but I trust that we may succeed in gaining their consent to the provisions which will to a certain extent restrict their powers. The argument that I would use with them is that they need not fear the introduction in India of a principle which has been adopted in England with such strong adhesion on the part of Parliament and the public, especially when they consider that the powers which it is proposed to give to the Railway Commission by this Bill are far less stringent than those which have been conferred by the Act recently passed in England, and also that in India any unreasonable interference on the part of Government is less to be dreaded than elsewhere, because the Government is not only the principal railway owner in this country but is also itself a partner in all the guaranteed railways, so that nothing can affect their interests injuriously which would not also recoil on its own head.

" Another point of considerable importance which was brought to my notice by the railway delegates last month was this. According to the provisions of the Bill there are to be three Railway Commissioners, whose qualifications have been mentioned in Mr. Scoble's speech. But the Bill does not propose that these Commissioners should sit in permanence or should always be the same. A different Judge would be selected, and probably also a different mercantile man, according as the cause of dispute arose in Madras, Bombay or Upper India. It was natural therefore to fear that these different Commissioners might pass decisions at variance with each other or not in accordance with English precedents; and it was generally felt that it is a most important thing for railway interests that such cases should be decided finally and without appeal. A hope was therefore expressed that at least the special railway officer on the

Commission should be permanent and unchanged; and it was pointed out that the best selection would be made if he were a permanent Government official, who remained constantly in touch with railway work but was unconnected with the direct administration of any State line, so that it might not be suspected that he would be influenced by the clashing of Government interests with those of other and possibly competing railway systems. I think that there is a great deal to be said for this suggestion, and that it deserves the careful consideration of Government. It would be obviously impossible to appoint an official solely to the post of Railway Commissioner, not only on the grounds mentioned that if not brought into daily contact with the working of railways he would soon lose his practical grasp of the matters in dispute, but also on the financial ground that it would be impossible to retain a highly paid officer for such light and occasional work as we expect to arise before the Railway Commission. The end aimed at might perhaps be attained by giving to this officer the statistical work of collecting, checking and collating the returns sent up by the different railway systems, which work is now done in the Director General's office and the results of which are published in his annual report. I do not wish at present to pronounce any definite opinion on the possibility of carrying out this suggestion, and can only pledge myself to give it, or any other plan which would lead to the same end, the most careful consideration.

"The question of the taxation of railway property for local purposes by municipalities or other local bodies, as provided for in section 131 of the Bill, has been touched on by my hon'ble friend, who has stated that possibly it may be decided not to interfere with any amounts at present collected in this way but only to restrict such taxation for the future. Speaking in my personal capacity I confess to a hope that this legislature in its wisdom may see fit to go further than my hon'ble friend proposes. It seems to me that there is something positively unreasonable and unjust in such taxation as is now imposed by some municipalities. The *raison d'être* of municipal taxation is that it should be a payment for services rendered in the shape of sanitation, police, lighting, water-supply, road-making or any other such conveniences to dwellers within municipal limits. Now, a railway administration provides its own sanitation, police, lighting and watering, and it is, in itself, the largest possible contributor to the road communications of the municipality. To tax such an administration therefore on its rateable value just as a house is taxed, the dwellers in which benefit by all the services abovementioned, seems to me preposterous, and I trust that we may be able to remove this anomaly altogether in future.

"I may also allude here to another branch of the same subject. Guaranteed and State railways are by law exempted from the payment of local cesses which are usually imposed on land, but private railways are not. Government has lately had before it the case of the Tarkeshwar Railway, which has been called upon by the local board of the district in which it lies to pay the local cess by which landowners contribute to the up-keep of roads. Here we have the same absurdity which I have mentioned before, but in a heightened form, the best of all possible roads being taxed to keep up other roads; and we have it applied to the detriment of a class of railways that we especially desire to foster—railways owned by private companies and unconnected with the State. I trust that the Bill now before this Council will effectually dispose of such claims to taxation as this.

"The Hon'ble Mr. Scoble has referred cursorily to the provision of latrine accommodation in third class carriages. This provision is perhaps more keenly advocated than any other reform by the Native Press, and a section (74) enforcing this provision was inserted in the first draft of the Railway Bill. The proposal was, however, condemned by every authority to which the draft Bill was referred, and it would appear to be impracticable in the present type of carriage with lateral compartments. The accommodation, if provided, would take up about 20 per cent. of the available carrying space, and would consequently necessitate a corresponding increase in the third class fares. In addition to this not only are there insuperable difficulties in keeping latrines in carriages clean and free from offensive smells and in preventing persons from using the latrines when trains are standing at stations, but there are also serious objections from a sanitary point of view to the pollution of the road itself, especially in the vicinity of towns and stations. The arrangement has been given a fair trial on several of the principal railways, and invariably abandoned for the reasons I have mentioned.

"I need hardly say that I am most anxious to meet all reasonable wishes of that great class who form more than 97 per cent. of the total number of travellers on our railways, but I think it is clear that this wish cannot be gratified without inordinate expense and without other inconveniences which are even a more serious obstacle than expense. We have therefore thought it advisable to omit all reference to this subject in our present draft.

"My hon'ble friend the Law Member in his speech has referred to the impossibility of bringing railway receipts under the law which affects bills of lading given by seagoing vessels. It may be worth while to mention in connection with this that section 81 of the Bill proposes to give one very desirable

convenience to exporters from this country, in that it facilitates the through booking of goods from India to England, and *vice versâ*, and will thus help to remove the difficulties which have been met with in carrying out the arrangements which Colonel Conway Gordon has made between the North-Western Railway and the Hall Line of Steamers for the through booking of goods between England and the Punjab. I hope that the encouragement thus given to this system will tend to its development and spread on other railway administrations.

"I should like in conclusion to draw public attention to a few sections which are, I think, of considerable utility, some of them as protecting the railways against the public and some as protecting the public against the railways. Under the first class I would mention section 60, which is intended to meet a case which is not uncommon now, and might probably become still more common, where a consignor falsely declares his goods to be of lower value than they really are, consigning, for instance, piecegoods under the description of old iron, or writing paper as piecegoods, in order that they may be put in a lower class and pay a lower rate. In the second class I would draw attention to section 46, which declares that the public have a right to a full explanation of all charges made by railways; and to section 75, which lays down that a railway is responsible for the value of any excepted article lost or damaged not exceeding Rs. 100. In Schedule II of the Bill a list is given of these excepted articles which must be declared and insured, such as gold and silver, precious stones, Government securities, paintings and the like. It appears that under the present law if a bundle of clothing were sent by rail, some of which had on it gold embroidery, and this were not declared, the railway might plead exemption from any loss; but in future, as now provided in this Bill, any small omission of this kind will not vitiate the owner's title to compensation up to the amount of Rs. 100.

"Lastly, section 133 extends the present law by declaring that every railway servant is a public servant for the purposes of the whole of Chapter IX of the Penal Code, and thus not only makes him liable to punishment for extortion, oppression or any similar offences, but also makes it illegal for him to trade on his own account, and thus secures to the railway, whose servant he is, the whole of his services.

"I have nothing further to say except that I trust that this Bill will receive the most careful consideration both from the railway administrations concerned and also from the travelling and mercantile public, and that with

the help of such suggestions as they may supply we may be able to pass it into law at the next session of Your Excellency's Council in Calcutta."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

BURMA FINANCIAL COMMISSIONER'S BILL.

The Hon'ble SIR CHARLES AITCHISON moved for leave to introduce a Bill to provide for the appointment of a Financial Commissioner for Burma and for the definition of his functions. He said:—

"This Bill requires very little explanation. Hitherto the Chief Commissioner has been the Chief Revenue-authority in Burma. It has been found necessary, however, to relieve the Chief Commissioner of much of the work which falls upon him in that capacity and to appoint a Financial Commissioner who shall stand to the Chief Commissioner in somewhat the same relation as the Financial Commissioners in the Punjab stand to the Lieutenant-Governor. The Bill provides that the Financial Commissioner shall be the Chief Revenue-authority and shall exercise such powers as may be delegated to him by the Local Government with the previous sanction of the Governor General in Council. It also validates the proceedings of the Financial Commissioner since the date of his appointment on 1st April last."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also introduced the Bill.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India and the Burma Gazette.

The Motion was put and agreed to.

BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.

The Hon'ble SIR CHARLES AITCHISON also moved for leave to introduce a Bill to amend the Burma Municipal Act, 1884. He said:—

"The necessity for this Bill has arisen out of difficulties experienced in the collection of certain municipal taxes in Rangoon.

"Under section 41 of the Burma Municipal Act, 1884, taxes are imposed upon houses and lands which are recoverable jointly and severally from the owner and the occupier. Under sections 42, 43 and 44 a water-tax, a lighting-tax and a scavenging-tax are imposed; and, as is usual in the case of taxes imposed for services rendered, these are recoverable from the occupier only. Now, in Rangoon many of the houses, especially in the business part of the town, are let in portions generally to poor people on a daily tenancy and for daily rents. The occupants therefore are constantly changing, and the municipality finds the greatest difficulty alike in apportioning and in realizing the occupiers' taxes. It is estimated that out of a total demand of about Rs. 2,50,000 on account of the water, lighting and scavenging taxes, the committee will be unable, as the law stands at present, to collect Rs. 50,000. As the expenditure under the three heads taken together considerably exceeds the total demand, the loss of 20 per cent. of the taxes is a very serious matter. It is therefore proposed to put these three taxes on the same footing as the others, that is to say, to make them payable jointly and severally by owner and occupier. On the recommendation of the Chief Commissioner the change is made general instead of being limited to Rangoon.

"It will be observed that in some respects the Bill exempts Government from the liability of an owner. The main object of this distinction is to avoid raising difficult and inconvenient questions of ownership in respect to certain Government lands on which buildings have been erected or which have been otherwise occupied without sufficient title.

"The Bill has the approval of the Chief Commissioner."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also introduced the Bill.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India and the Burma Gazette.

The Motion was put and agreed to.

LOWER BURMA RURAL POLICE BILL.

The Hon'ble SIR CHARLES AITCHISON also moved for leave to introduce a Bill to provide for the establishment of a village-system and amend the law relating to Rural Police in Lower Burma. He said:—

" The Bill which I have now the honour to move for leave to introduce is an important one and much needed in order to strengthen the administration in Lower Burma in dealing with violent crime and in maintaining law and order. Its primary object is to establish a system of village-organisation in Lower Burma, or rather to re-establish it. For in Lower Burma, as in Upper Burma, we found on annexation the entire government of the country resting upon a village-organisation, each village having its responsible headman, who exercised police and magisterial powers and acted as arbitrator and judge in civil disputes. The timely introduction of the Upper Burma Village Regulation has checked the disintegration of the system, which had already begun in that part of the country with the introduction of our rule. And it is now proposed in Lower Burma to do something towards the restoration of an organisation to the want of which the Chief Commissioner directly attributes much of the disorder which has of late prevailed and which to some extent still continues.

" So much has this want been felt in Burma even in ordinary times that steps were taken in 1880, by the enactment of the District Cesses and Rural Police Act, to improve the status of the village-headman and to define his duties. The Act imposed a cess of 5 per cent. on the land-revenue for the maintenance of village-police, provided for the appointment of headmen of villages and headmen of circuits, invested them with the powers of police-officers, empowered them to call on the inhabitants of their jurisdiction to assist in the suppression of crime and rendered it compulsory to comply with such requisitions. It also made liable to punishment with fine the inhabitants of places where dacoity and robbery are committed and where dacoits and robbers are harboured with their connivance. The Act, however, was faulty in making the headman the servant of too many masters, and was defective in not giving him sufficient powers to enforce his orders. It has not therefore been able to stand the strain of the crisis through which the province has passed, and it has now become necessary to re-adjust the whole system. In doing so it is proposed to follow the plan which has been adopted with marked success in Upper Burma.

" The principal sections of the Bill divide themselves naturally into two parts, sections 3 to 10 relating to the appointment of village-headmen and the definition of their powers and duties, and sections 11 to 23, which enforce village-re-

sponsibility and are designed to repress crime. The latter will come into force as soon as enacted, the former only in places to which they may be extended from time to time by the Local Government. The reason for this is that the selection and appointment of headmen will require much labour and care, and District-officers will not be able to put the provisions of the Act relating to the headmen into force in the whole of their districts at once. This portion of the Act therefore will be applied gradually.

"The Chief Commissioner strongly recommends, in order to enhance the status of the headman and give him a substantial and permanent interest in his office, that he should receive a small area of land free of revenue to be held so long as he shall remain in office and discharge his duties efficiently. This is a measure which was very strongly advocated in 1879, when the Chief Commissioner of British Burma submitted the Rural Police and District Cess Bill. The provisions in this behalf, however, were struck out of the Bill, as it was considered that the object in view could be attained by administrative arrangement. This was true enough so far as the grant of the land or the exemption from revenue is concerned. But it was difficult without legislation to treat the holding as an appanage of the office and prevent the acquisition of private rights therein. The result is that the measure has been a dead letter, and this is probably one of the reasons among others why the headman in Lower Burma has not had the influence that was expected. The present Bill leaves the question of the grant of land or remission of revenue to be dealt with, as before, as an administrative matter, but provides for treating the holding and emoluments as an appanage of the office when the remuneration of the headman takes that form, and for their tenure and devolution accordingly.

"As the other provisions of the Bill are taken bodily from the Upper Burma Village Regulation of 1887 and from Act II of 1880, it is hardly necessary at the present stage that I should either enumerate them or justify them to this Council as legislative measures. As regards the duties of the headman, these the Chief Commissioner says 'will be similar to those which he now performs. But he will have power to enforce his authority; and owing to his civil and criminal powers he will occupy a position of far greater influence than that which he now holds. The Chief Commissioner considers it essential that the headman should have powers to enforce his orders. The powers given to the headman for this purpose are similar to those enjoyed by patels under the Bombay system. This is the vital principle of the whole scheme, and Sir Charles Crosthwaite earnestly hopes that it may be accepted without material modifications.' With respect to the

provisions of the Bill which enforce village-responsibility and strengthen the hands of the District-officers and Commissioners, the Chief Commissioner says :—

'The recent disturbances in Lower Burma have clearly shown that there is need of measures for strengthening the hands of Deputy Commissioners. The power of promptly punishing villages which afford help and shelter to dacoits or which fail to resist attack, of requiring villages to be made defensible, of moving remote and isolated houses and hamlets which furnish dacoits with supplies, of enforcing village-responsibility for crime, and of maintaining supervision over persons who move from village to village, is much needed. In some places, such as in the Thayetmyo and Tharrawaddy districts, where violent crime is rife, and where the district authorities have been powerless against it, the need is urgent. It is only by the adoption of measures similar to those provided for in the present Bill that any headway has been made in those parts of the country which, since the end of 1885, have been overrun by dacoit gangs. The reports connected with the operations in the Pyuntaza subdivision of the Shwegyin district have been before the Government of India. Similar operations were commenced in the early part of the present year in the Minhla subdivision of Thayetmyo, which was the chief scene of Bo Swè's crimes, and in the Myedè and Sinbaungwè subdivisions of the same district. The results have been attended in the Minhla subdivision with considerable and in the Myedè subdivision with complete success. The Chief Commissioner asks that District-officers in Lower Burma may be placed in the same position as those in Upper Burma in respect of the management of their districts.'

"Lastly, as regards the general necessity for this measure, I quote the following weighty words of the Chief Commissioner :—

'The law as it stands at present does not enable the Magistrate to make the people interest themselves in suppressing crime. It is as certain as anything can be that, if the people chose to assist us even by timely information, there is not a dacoit gang which could survive for a fortnight. They do not assist the Government in any way. On the contrary, many of them feed and shelter the outlaws, provide them with ammunition, warn them of the movements of the police, and when occasion arises furnish them with recruits from the villages. This condition of affairs has long been chronic in Upper Burma and in some parts of Lower Burma. It is the natural outcome of the character of the country, of the people, and of the government that they have submitted to for some centuries. Under such circumstances, and in a country intersected by streams and creeks and full of heavy forest and thick jungle, the ordinary police-force becomes helpless and fresh posts and increased garrisons become necessary. This state of things will go on in Lower Burma as it has for the last six or seven years at least, increased expenditure being incurred without any improvement of a permanent kind either in the efficiency of the police or in the conduct of the people, unless some change in the law is made which will compel the people to act together and to assist the officers of Government. It is believed that a measure of the kind now proposed will secure the attainment of this result.'

"Sir Charles Crosthwaite has been Chief Commissioner of Burma for something over twenty months. During that time he has accomplished great things

under difficulties the magnitude of which can only be fully appreciated by those who, like myself, have had the opportunity of watching his administration from day to day. His government has been characterized by an intelligence, moderation, firmness and vigour from which I cannot withhold in this place my tribute of warm admiration. I believe that, if this Bill is, with the permission of Council, introduced and passed into law, it will in Sir Charles Crosthwaite's hands in time contribute materially to the thorough re-establishment of law and order in every district of Lower Burma, and towards the laying of a firm foundation for the future peace and prosperity of that most important province."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES AITCHISON also introduced the Bill.

The Hon'ble SIR CHARLES AITCHISON also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English and in the Vernacular.

The Motion was put and agreed to.

SOLDIERS' NECESSARIES PURCHASE ENACTMENTS REPEAL BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved that the Bill to repeal certain enactments relating to the purchase of regimental necessaries from soldiers be taken into consideration. He said:—

"I explained, in introducing this Bill into the Council, that its object was to bring the law of India into harmony wtth the provisions of the Army Act, in respect to the penalties involved in the illicit purchase of regimental necessaries from soldiers. The Bill is of a very simple character and has not called for any criticism and is not likely to call for any such, except perhaps from the criminal classes who are engaged in these illegal purchases."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill be passed.

The Motion was put and agreed to.

[*Lieutenant-General Chesney; The President.*] [25TH OCTOBER, 1888.]

INDIAN MARINE ACT, 1887, AMENDMENT BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill to amend the Indian Marine Act, 1887, be taken into consideration. He said :—

"In moving for leave to introduce this Bill I explained to the Council that its object was simply to amend a technical provision in the wording of certain nomenclature recited in the Bill. It is a matter therefore of a purely technical character and does not call for any further explanation."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL CHESNEY also moved that the Bill be passed.

The Motion was put and agreed to.

DEATH OF COLONEL A. C. W. CROOKSHANK, C. B.

At the close of the proceedings His Excellency THE PRESIDENT spoke as follows regarding the death of Colonel A. C. W. Crookshank, Commanding the Fourth Column of the Hazara Field Force :—

"I am sure it will be a matter of regret to all of the members of the Legislative Council to have heard the sad intelligence of the death of a very distinguished officer, in consequence of a wound which he recently received during the operations of Her Majesty's troops in the Black Mountain. We were all personally acquainted with Colonel Crookshank, as for a considerable period he served the Government of India in the important capacity of Deputy Secretary in the Military Department. Not only so, but he also has had a distinguished career as a soldier, and he has now lost his life in the discharge of his duties as the Colonel Commanding one of of the four columns that were despatched against the rebellious tribes in the Black Mountain, and in command of the Pioneer Regiment. It is unnecessary for me to add with what deep regret the Government of India has learnt the loss of so gallant an officer and so distinguished a servant of the Crown."

The Council adjourned *sine die.*

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

SIMLA;
The 26th October, 1888.

G. C. Press, Simla.—No. 418 L. D.—24-10-88.—386.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 21st December, 1888.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. A. Elliott, K.C.S.I.

The Hon'ble P. P. Hutchins, C.S.I.

The Hon'ble D. M. Barbour, C.S.I.

The Hon'ble R. Steel.

The Hon'ble F. M. Halliday.

The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.

The Hon'ble Syud Ameer Hossein, C.I.E.

The Hon'ble Rájá Durgá Charn Laha, C.I.E.

The Hon'ble G. H. P. Evans.

NEW MEMBERS.

The Hon'ble SYUD AMEER HOSSEIN, the Hon'ble RÁJÁ DURGA CHARN LAHA and the Hon'ble MR. EVANS took their seats as Additional Members.

METAL TOKENS BILL.

The Hon'ble MR. SCOBLE moved that the Hon'ble Mr. Barbour be substituted for Mr. Westland as a member of the Select Committee on the Bill to prohibit the making of issue by private persons of pieces of metal for use as money and the making of coins in resemblance or similitude of coins of Foreign States, and that the Hon'ble Messrs. Steel and Halliday and the Mahárájá of Vizianagram be added to the Committee.

The Motion was put and agreed to.

MEASURES OF LENGTH BILL.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Messrs. Barbour and Steel, the Hon'ble Sir Dinshaw Manockjee Petit and the Hon'ble Rájá Durga Charn Laha be added to the Select Committee on the Bill to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India.

The Motion was put and agreed to.

SALT-DUTY BILL.

The Hon'ble MR. SCOBLE also moved that the Hon'ble Mr. Barbour be substituted for Mr. Westland as a Member of the Select Committee on the Bill to regulate the payment of duty in respect of Salt where there has been an alteration of the rate of duty payable in respect thereof, and that the Hon'ble Mr. Steel and the Hon'ble Sir Dinshaw Manockjee Petit be added to the Commiteet.

The Motion was put and agreed to.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, and the Court-fees Act, 1870, and to make provision with respect to certain other matters be referred to a Select Committee consisting of the Hon'ble Messrs. Hutchins, Barbour and Evans, the Hon'ble Syud Ameer Hossein, the Hon'ble Rájá Durga Charn Laha and the Mover.

The Motion was put and agreed to.

SUCCESSION CERTIFICATE BILL.

The Hon'ble MR. BARBOUR moved that the Bill to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons be referred to a Select Committee consisting of the Hon'ble Messrs. Scoble, Hutchins and Evans, the Hon'ble Syud Ameer Hossein, the Hon'ble Rájá Durga Charn Laha and the Mover.

The Motion was put and agreed to.

BENGAL SECRETARIAT LIBRARY

CANTONMENTS BILL.

The Hon'ble LIEUTENANT-GENERAL CHESNEY moved that the Bill to consolidate and amend the law relating to Cantonments be referred to a Select Committee consisting of the Hon'ble Messrs. Scoble, Hutchins and Quinton, the Mahárájá of Vizianagram, the Hon'ble Syud Ameer Hossein and the Mover.

The Motion was put and agreed to.

MERCHANDISE MARKS BILL.

The Hon'ble MR. SCOBLE moved that the Bill to amend the law relating to Fraudulent Marks on Merchandise be referred to a Select Committee consisting of the Hon'ble Messrs. Hutchins, Barbour and Steel, the Hon'ble Sir Dinshaw Manockjee Petit, the Hon'ble Rájá Durga Charn Laha and the Mover.

The Motion was put and agreed to.

RAILWAYS BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to consolidate, amend and add to the law relating to Railways in India be referred to a Select Committee consisting of the Hon'ble Sir Charles Elliott, the Hon'ble Messrs. Hutchins and Steel, the Hon'ble Sir Dinshaw Manockjee Petit and the Mover.

The Hon'ble RÁJÁ DURGA CHARN LAHA said :—"Before the Railway Bill is referred to the Select Committee I wish to say a few words on the subject. I see there is no provision made in it for the retiring accommodation of third class passengers. This is an urgent necessity, and which, I am sure, cannot be entirely ignored by the railway authorities, and I may state that the public feeling outside is very strong on the point.

"The British Indian Association made a representation on the subject to the Railway Conference which lately sat at Simla, and this representation will no doubt be placed before the Committee and carefully considered. It suggests several important improvements. The greatest inconvenience experienced by third class passengers arises from an absence of some sort of retiring accommodation in the trains, and it is particularly so in the case of female passengers. In my opinion, some provision should be made in order to remove the inconvenience so keenly felt."

The Hon'ble MR. SCOBLE said:—"I may say that I invited my hon'ble friend Rájá Durga Charn Laha to become a member of the Select Committee on this Bill in order that he might represent his views on the point, but unfortunately his engagements will not permit him to serve on the Committee; but I am sure the Committee would be glad to give him an opportunity of expressing his views on this or any other points of the Bill during its discussion in Committee."

The Hon'ble RÁJÁ DURGA CHARN LAHA said:—"I do not think I shall be able to attend during the whole course of the sittings of the Committee, but I shall be glad to attend on occasions when this or any other particular point is to be considered."

The Hon'ble MR. SCOBLE said:—"I have no doubt the Committee will be glad to give the hon'ble member an opportunity of attending their meetings whenever he desires to do so."

THE PRESIDENT said he presumed this would meet the views of the hon'ble member.

The Motion was put and agreed to.

BURMA FINANCIAL COMMISSIONER'S BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to provide for the appointment of a Financial Commissioner for Burma and for the definition of his functions be taken into consideration. He said:—

"The object of this Bill is to provide much-needed relief for that very hard-worked official, the Chief Commissioner of Burma. The administration of that great province involves a vast amount of labour, of a portion of which it is not only expedient but necessary that he should be able to divest himself. As some of his duties, especially in relation to revenue matters, are imposed upon him by legislative enactment, an Act of this Council is required to enable him to transfer those duties to another officer. The Bill accordingly provides that the Financial Commissioner shall be the Chief Revenue-authority in Burma, and shall exercise such functions as the Local Government, with the previous sanction of the Governor General in Council, may delegate to him. And, as a Financial Commissioner was appointed some months ago, the Bill further validates his proceedings since the date of his appointment.

"One alteration only has been made in the Bill since it was introduced by my hon'ble friend Sir Charles Aitchison on the 25th of October. It is now proposed that the Act, if passed, shall come into force at once, instead of at such time as the Local Government, with the previous sanction of the Governor General in Council, might appoint. As the Financial Commissioner is already at work, I think the Council will agree with me that this amendment may properly be accepted."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill, as amended, be passed

The Motion was put and agreed to.

BURMA MUNICIPAL ACT, 1884, AMENDMENT BILL.

The Hon'ble MR. SCOBLE also moved that the Bill to amend the Burma Municipal Act, 1884, be taken into consideration. He said:—

"This Bill was introduced by my hon'ble friend Sir Charles Aitchison on the 25th of October. It has the approval of the Chief Commissioner of Burma, and it has been published, in conformity with the orders of this Council, in the Burma Gazette.

"Its object is simple. Under the Burma Municipal Act of 1874 two classes of taxes are allowed to be levied. The first class, under section 41, are property taxes for general purposes, payable by the person in possession, that is, the owner for the time being. The second class—water, lighting and scavenging rates imposed under sections 42, 43 and 44—are service taxes and payable by the occupier. In theory this apportionment is perfectly correct. The former are ordinary taxes on property, and as such are rightly payable by the owner; but the taxes levied to meet the cost of the water-supply, of the lighting of the streets, and of the conservancy of the town, are payments made in respect of special services from which the occupiers of houses, as distinguished from the owners, derive immediate benefit. This theoretical distinction, however, has produced practical inconvenience. It is represented that most of the houses in the business part of Rangoon are let in portions, that the tenants are constantly changing, and that in many cases the tenancies are from day to day. The occupiers of these tenements are of the poorest classes. As the Chief Commissioner points out, 'the difficulty of justly apportioning the amount of

tax payable under these circumstances would be great, and, even if it were possible to apportion the incidence of the taxes in question, the difficulty of realising the taxes demanded by any process of attachment is practically insurmountable.' 'Moreover,' he adds, 'it is stated that, these taxes having for a long time been paid by owners, rents had been adjusted so as to enable the owner to recover from the tenant the amount of the tax.' This, I think, is more than probable.

"A recent decision of the Recorder of Rangoon has placed owners of houses in the position of being able to decline to pay these taxes, without, so far as has been ascertained, making a corresponding reduction in the rent claimed from their tenants. It is calculated that in consequence the municipality will be unable to collect Rs. 50,000 out of a total demand of about Rs. 2,50,000 on account of the taxes in question, and the municipal committee of Rangoon,—a thoroughly representative body,—at a meeting at which there were present one official member and fourteen non-official members, of whom there were six Europeans, four Burmans, two Muhammadans, one Hindu and one Chinese, unanimously recommended that the alteration in the law which is now proposed should be made.

"I think the case is fully made out as regards Rangoon, and, as the state of things which prevails there is not unlikely to be found to exist in other municipalities in Burma, it seems desirable that the alteration of the law should be of general and not particular application.

"The effect of the Bill will be to make owners and occupiers jointly and severally liable for these taxes; in this way the municipality will certainly get its dues, while at the same time provision is made that an occupier who has paid an owner's rate under section 41 may deduct it from the rent, and an owner who has paid service rates under sections 42, 43 and 44 may recover them from his tenants, in the absence of an agreement to the contrary.

"There is also a provision by which Government is in some respects exempted from the liability of an owner under the Municipal Act. This is suggested by special circumstances, into which it is unnecessary to enter, and is intended to avoid the raising, upon the side issue of liability to taxation, of difficult and inconvenient questions of title between Government and the owners of house-property in Rangoon."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that the Bill be passed.

The Motion was put and agreed to.

BURMA RURAL POLICE BILL.

The Hon'ble MR. HUTCHINS moved that the Bill to provide for the establishment of a village-system and amend the law relating to Rural Police in Lower Burma be referred to a Select Committee consisting of the Hon'ble Messrs. Scoble and Quinton and the Mover. He said:—

"This Bill was introduced by Sir Charles Aitchison on the 25th October last, and I have succeeded to its charge. The Chief Commissioner has proposed some trifling amendments in the Bill, and I think it desirable that they should be considered by a small Select Committee."

The Motion was put and agreed to.

MADRAS CORONER'S BILL.

The Hon'ble MR. HUTCHINS also moved for leave to introduce a Bill to abolish the office of Coroner of Madras. He said:—"The Bill which I have now to bring before the Council is, as its title indicates, a Bill to abolish the office of Coroner of Madras. It has only a local interest, and Your Excellency and the Council will probably be satisfied if I am able to show that the authorities, having special knowledge of the circumstances of the city of Madras, are unanimously in favour of the measure.

"But, before I proceed to quote their recorded opinions, I wish to anticipate a possible objection,—the only objection which, I think, is possible,—and that is, why should we treat Madras differently from the other presidency-towns? If we pass this Bill, will it not be a first step towards the abolition of the Coroners of Calcutta and Bombay also? The simple answer to these questions is that Madras is already in this very matter treated differently from her sister cities. The Coroner of Madras only acts in a portion of the town of Madras: in the rest his duties are performed by the police. The law establishing Coroners in the three presidency-towns is an Act of 1871. Before ten years had elapsed, it was found impossible for the Coroner of Madras to exercise his functions throughout the numerous hamlets included within the city boundaries, which enclose an area of no less than twenty-seven square miles. Accordingly, another Act (X of 1881) had to be passed to

enable the Local Government to regulate the local limits within which the Coroner should act. Section 3 of that Act provided that 'the Governor of Fort St. George may, from time to time, with the previous sanction of the Governor General in Council, by notification in the Fort St. George Gazette, alter the local limits of the jurisdiction of the Coroner of Madras.' Under these powers the Local Government has greatly curtailed the Coroner's limits, and in the excluded areas inquests are already held by or under the authority of the Commissioner of Police. It would be competent for the Local Government to carry this process further and even to reduce the Coroner's jurisdiction to something merely nominal. This Bill therefore proposes to do little more than can already be accomplished by an executive order. As the Local Government, which is empowered to make such order, wish to abolish the office of Coroner, I think we may readily agree to give effect to their recommendation. We shall thereby get rid of a very inconvenient dual jurisdiction which now exists only in Madras, and we shall bring the whole of Madras, as far as inquests are concerned, under the very same conditions which prevail in the greater part of it, as well as in Allahabad, Karáchi, Lahore, Rangoon and other large towns of the Indian Empire.

"The measure does not at all involve an attack upon the office of Coroner as an institution, and I do not propose to say a word against its undoubted usefulness in the days of our forefathers, or even against its appropriateness to the present time. Some disparaging expressions may perhaps be found in some of the papers I have before me, but I shall only quote enough to show that the Local Government, the High Court, the Presidency Magistrates and the Commissioner of Police all agree that the office need not be continued, and to satisfy you that the proposal to abolish the Coronership is not a mere outcome of zeal for financial economy, although it originally emanated from the Finance Committee.

"In a letter dated 21st June, 1888, addressed to the High Court, the Local Government said:—

'In the class of cases which form the most important subjects of a Coroner's enquiry, that officer is to a great extent dependent on the aid rendered by the police. When crime, or even a suspicion of crime, is present, it is on the police and the magistracy that the public really rely. If it be undesirable to entrust the police with the preliminary enquiry of which an inquest consists, namely, whether a death has been due to natural causes, it should be much less expedient to impose on them the

graver and more difficult investigation which often follows an inquest and on which invariably depends the detection of crime in suspicious cases. There is also much force in the Commissioner's observation that the necessity for withholding the power to hold an inquest from the police would be much greater in obscure rural parts of the country than in the presidency-town, where it is highly improbable that cases would be successfully suppressed in the face of public opinion and diffused sources of information.'

"To this I may add that the city police are far more strictly supervised and kept better in hand than is possible in the mufassal. The Government went on to say—

'The present system of territorial division between the police and the magistracy is justly characterised by the Commissioner as illogical and unsatisfactory, but it has served to show that the work done under it by the police during the last six years has been in no way inferior to that performed by the Coroner.'

"In replying to this letter the High Court did not take objection to the abolition of the office, but they were at first desirous that the work of the Coroner should devolve on the Presidency Magistrates. It was found, however, that it would not be possible to transfer the Coroner's duties to the Magistrates without causing great public inconvenience and interruption of the business of the Courts. An unburied corpse, it was observed, demands instant attention, and a Magistrate might have to leave his Court and drive some miles to hold an inquest. But in order to meet the views of the High Court the Government undertook to make certain precautionary rules. I do not think I need trouble the Council with these rules in detail. Suffice it to say that the power to make such rules as may be required is reserved to the Government by section 4 of the Bill, and that, in view of the safeguards proposed by the Government, the High Court, on the 7th August, 1888, withdrew their objections and finally consented to the abolition of the office. The remarks of the Local Government which I have just read are adopted substantially from a report made by the Commissioner of Police, Colonel Weldon, who was himself for many years Chief Presidency Magistrate, and his views on the matter are shared by the present Chief Magistrate. It will be thus seen that all the local authorities are agreed that the office of Coroner in Madras may now be abolished."

The Motion was put and agreed to.

The Hon'ble MR. HUTCHINS also introduced the Bill.

The Hon'ble MR. HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 4th January, 1889.

S. HARVEY JAMES,
Secretary to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 27th December, 1888.

Government of India Central Printing Office.—No. 576 L. D.—27.12.88.—110.—A. T. dS.